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JPRS-LAM-86-114

16 DECEMBER 1986

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Latin America Report

BRAZIL: DRAFT OF NEW CONSTITUTION

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LATIN AMERICA REPORT

BRAZIL: DRAFT OF NEW CONSTITUTION

CONTENTS

What the National Constituent Assembly is.....	1
Brief History of the Constituent Assemblies.....	3
Preamble.....	9
Draft Constitution.....	10

DRAFT OF NEW CONSTITUTION

Rio de Janeiro MANCHETE in Portuguese No 1795 3 Sep 86 pp 1-40

[Text] The New Constitution of Brazil

The complete text of the draft from the Constitutional Studies Commission, including the preamble by jurist Afonso Arinos de Mello Franco.

What the National Constituent Assembly Is

[Article by Murilo Melo Filho, journalist, and political editor for Bloch Publishers and the magazine MANCHETE]

It is amazing to discover the ignorance of the large majority of Brazilian people regarding what a Constituent Assembly is. Perhaps for this very reason, heed should have been paid to those warning against the unfeasibility of holding general elections on 15 November of this year, with a combined selection of governors, senators, and deputies.

It was cautioned at the time that the general tendency of the electorate would be toward polarization concerning the election for the governments of the 23 states, to the detriment and harm of the election of 479 federal deputies and 49 senators (two for each of the 23 states, and three more senators for Brasilia).

And that is really what is happening. In the public opinion polls, there is a combination of great confusion and ignorance regarding the Constituent Assembly.

The voters do not realize that, in addition to senators and deputies, they will also be electing, in the same persons, candidates who will prepare the country's future Constitution. So, what is a Constituent Assembly?

A Constituent Assembly is the Congress itself, with special powers to draft a Constitution. When that mission has ended, the deputies and senators return to their normal positions of authority as ordinary legislators, until the end of their respective terms.

The importance lies precisely in the fact that Congresses and governments pass on, but Constitutions remain. It is even expected that the next one will be

sufficiently synthesized to have a long life; because all the Constitutions approved or provided for the country to date have been relatively short-lived, precisely because they were casuistic and overly long.

In view of this reprehensible past experience, it is hoped that, this year, the members of the Constituent Assembly will have enough good sense and skill to offer the country a succinct text but one that, in its brevity, will be capable of guiding the lives of Brazilian citizens over the next 40 or 50 years.

Shall we have a parliamentary cabinet, a presidentialist government, or a blend of the two? What will President Sarney's term in office be: 4 years, with reelection, or 6 years, without it? Will the current parties survive the new Constitution?

The new Constituent Assembly members will have extensive, absolute powers. They are only unauthorized to abrogate the federation and the republic. They can do anything else.

Hence, the importance of those elections. Hence, also, the temptations that they hold for large social segments in the country, including those with economic power, which are not sparing any funds to elect their representatives.

This time, the large business firms no longer want to be represented in the Congress by delegates or congressmen alien to their ranks. They have made a point of nominating and backing businessmen in whom they have complete trust.

Whereas, on the one hand, that interest might signify a misrepresentation of the people's desires, through the massive buying of votes from an increasingly indigent electorate, on the other, it shows that business owners have, for once and for all, decided to emerge from their state of unconsciousness and default, toward a position of effective, conscious participation in deciding on the major national problems.

But it is odd that, slightly over 2 months before the elections for the National Constituent Assembly, some of its basic aspects have not yet been determined:

1. Who will preside over it: the president of the Senate, or of the Chamber, or of the Congress, to be sworn in on 1 February?
2. Will the forthcoming Constituent Assembly operate cumulatively, with the regular legislative work, or will a special commission be assigned to that task?
3. Where are the internal rules and regulations of the Constituent Assembly, which should already have been prepared at this point?
4. Of what use will the draft of the Afonso Arinos Commission be?

When those preliminary problems have been resolved, starting on 1 February, the Constituent Assembly will be able to devise the future Constitution, which could be approved a year later.

Brief History of the Constituent Assemblies

[Article by Helio Silva, physician, writer and journalist, author of "The Vargas Cycle," and one of Brazil's most esteemed historians]

The history of a people should be the history of their Constitution. Conservative Great Britain has, in the Bill of Rights, the traditional and virtually unchangeable laws that have governed the British since 1868. The United States has changed Hamilton's principles but little. Brazil has not been conservative. There have been seven (a symbolic, significant number) great Constitutions that have regulated its activities as a free nation.

Does the mutability of the laws reflect political and social changes, or do the latter require adaptation to our circumstances? It is a vicious circle. The law is changed because it no longer meets the needs for which it was supposed to provide. And, at every change, precisely because of the casuistic concern for addressing the demands of the time, individualized, detailed codes are made, filled with solutions for the problems of the moment. Consequently, that legislation ages as the society becomes transformed.

Incumbent on the new Constituent Assembly members is the task of preparing a Constitution that will establish a legitimate state of law; and a state of law exists only when it is not the rights of the states, but the rights of the citizens, which are asserted. The lesson taught by the history of Brazilian Constitutions is that the state's legitimate *raison d'etre* must be the common welfare of the citizens. A Constitution thus conceived must expurgate from its text all the vacillations and doubts that constitute obstacles to the social dynamism and development of that common welfare. Its drafting requires a clearness of form and content such that, suitable for keeping apace with the nation's social and institutional progress, it will last for centuries, like the United States Constitution and the British Bill of Rights; but always and primarily being a genuine Constitution of Brazil.

Brazil has had seven Constitutions, because it has not yet had its Constitution.

The first document of its kind in Brazil, the pre-Constitution, the Charter of Dom Manuel a Tome de Souza, is an order from the Kingdom, instructing the new colony to provide for its interests and those of its inhabitants, but with only sovereignty assured. Independence was created under a Portuguese prince, thus prolonging the "dependence" on Portugal. So much so that the first succession catered as much to the interests of the Kingdom of Portugal as to the interests of Brazil, which Pedro I left to become king of Portugal, or more so.

A reading and comparison of the Constitutions which ensued, including that of 1891, show that a Brazilian Constitution, a Charter for Brazil, was not created. When the Republic was proclaimed, the provisional government struck down Decree No 29 of 3 December 1889, which had entrusted to a commission comprised of Joaquim Saldanha Marinho, chairman; Americo Brasiliense, vice chairman; and Santos Werneck, Rangel Pestana, and Magalhaes Castro, the task of devising the draft of the Federal Constitution which would, in time, be submitted to the National Constituent Assembly.

Prefacing Volume XVII, 1890, Volume I-The Constitution of 1891-the "Complete Works of Rui Barbosa," Pedro Calmon reports that, "There were three drafts reduced by the commission to a single one, which the ministry studied at length, subjecting it to a prolonged, thorough analysis. 'At 1940 hours on the night of 10 June 1890, with all the ministers present, the discussion of this draft began. It was "ut supra" [as above]. Rui Barbosa.' This is the note attached by him to the original (transcribed in 'fac simile' [copy]), enhanced by the substitute manuscripts accompanying the text subjected to debate. Hence, this extended from 10 June, when it began, until... '2045 hours on the night of 18 June,' when 'the discussion of the Constitution, with the ministers present, ended in the palace of the head of state.' The revised draft, approved by Decree No 510 of the 22d of the same month, on which (slightly altered by Decree No 914A of 23 October) the constituent congress carried out its great endeavor, was called one 'of the Provisional Government.'"

It was with this Constitution that the First Republic adopted and adapted the evils of the Empire, developing a policy in disagreement with the principles of the Constitution. We were a federation without federalism; a democracy without political parties; a representative system poisoned by fraud; an economy dictated by foreign creditors. Thus, although we had great presidents, we did not have a great republic in the so-called Old Republic, which collapsed trampled by the horses arriving from the pampas.

We have had three types of democratic participation in Brazil: the first might be termed participation of the notables, covering the period from 15 November 1889 to 24 October 1930. The representative system was a constellation in which noted persons and intellectuals, and gutter politicians vitiated by fraud, who drew legitimacy and authenticity from mandates were included.

The movement of 30, justified by these corrupt practices, attempted the advent of what might be considered the participation of the middle class, with elections made ethical by the compulsory vote, women's vote, and electoral justice.

This was when the elections for the General Constituent Assembly (1933-34) were held. The new electoral legislation was open to women's participation, including the election of the first two female representatives in the Chamber of Deputies: scientist Berta Lutz, and physician Carlota Pereira de Queiroz; and the union (40) representation that lent this Constitution an expectation the opportunity for which would not be missed. Yet the major flaw in the practice of democracy persisted: genuine political parties, the legally

competent and legitimate instruments of democracy, were missing. The old PR (Republican Parties), born with the republic and distorted with it, were still holding out in the state oligarchies, blended with "lieutenant-oriented" influences and jostling with the LEC [Catholic Electoral League] groups. The moth-eaten ones (to use the pejorative phrase of José Americo de Almeida) were being represented in the Assembly, upholding the revised, augmented republication of the Charter of 1891. The Alliance members brought little other than the Liberal Alliance Manifesto, and the speech by Getulio Vargas on the castle grounds on 1 January 1930. After the revolutionary action of the first and second 5 July, the lieutenants had prepared the 3 October Club Manifesto, creating a program to justify their action. LEC defended the package of religious amendments, through a well structured electoral action, with the shock brigade of the United Sao Paulo Single Slate Legislative Group, under the leadership of Velho Alcantara Machado.

The antagonism existing among the various groups, not yet coordinated under the sway of the real leader, was evident. On the very day after the installation (the 16th), Deputy Henrique Dodsworth (PS [Socialist Party]) raised a point of order, demanding the reading of a draft Constitution. That would be the first of the four texts on which the Assembly deliberated.

Pressured by the Single Front, Vargas (through the same Decree 21402, of 14 May 1932 which set the date of the elections for the National Constituent Assembly at 3 May 1933) created a commission charged with preparing the draft Constitution that would be sent to the Constituent Assembly. On 1 November 1932, through Decree No 22040, the operation of the Constitutional Commission, known as the Itamarati Subcommittee, was regulated, with the first meeting held on the same date. The commission consisted of: Afranio de Melo Franco, chairman; Carlos Maximiliano, reporter; and Ministers Oswaldo Aranha and Jose Americo Gois Monteiro, Assis Brasil, Antonio Carlos, Prudente de Moraes Filho, Joao Mangabeira, Artur Ribeiro, Agenor de Route, Oliveira Viana and Temistocles Cavalcanti, and, later, Castro Nunes and Carneiro da Cunha.

The Constitution of 1934 was incorporated into the movement of post-war Western world constitutions, containing what was termed a "social sense of the law," and inspired by the German Weimar Constitution of 1919 and the Spanish Constitution of 1931. The most important points in the Constitution were related to the context of the economic and social order, for the first time included in a Brazilian constitutional text. The Constitution established the basic principles of labor legislation and dealt with the family, granting it special protection based on marriage, and establishing aid for numerous offspring. A chapter was included on education and culture, owing to the influence of the New School pioneers combined in the Brazilian Education Association. The Union was charged with devising the National Education Plan, the basic laws of which were established thereafter. Education was proclaimed a social right, as was work, and was to be managed by the family and the public authorities. In the chapter on individual rights and guarantees, the most important contribution was the introduction of the security mandate, aimed at protecting the authentic, incontestable right threatened or violated by a manifestly illegal act by any authority. The introduction of the institution originated in the Itamarati

Subcommission, at the proposal of Joao Mangabeira, and represented a long-standing demand, particularly after the 1926 reform restricted the scope of habeas corpus. The existence of the Constitution of 1934 was precarious. The coup of 10 November 1937 established the New State, through a granted Constitution. The brief duration of the Constitution of 1934 does not detract from its great merits, nor did it invalidate the introduction of principles which would later be incorporated into the positive Constitutional Law, and would be reiterated in the subsequent constitutions.

The Charter of 1934 did not have the expected duration. Historian Moises Vellinho noted that he was received in an audience at Catete Palace with President Getulio Vargas, when the president's secretary, diplomat Ronald de Carvalho, arrived, bringing word that the new Constitution had just been approved. Vargas, looking at the ceiling, in one of his characteristic poses, declared to his interlocutor and for history: "I shall be the first revisionist."

On 10 November 1937, the New State dictatorship was established, and Getulio Vargas gave Brazil a new Constitution, the Polish one, so called because it was based on the Polish model, giving the president all powers, in addition to an infinite number of reasons for ordering intervention in the states.

The Constitution of 1937 was Brazil's fourth. It is also called the New State Constitution, because it conveyed a juridical form and sense to that phase of Brazilian history. Its substance was authoritarian and centralist.

The Constitution was ready when Getulio Vargas announced to the nation the coup d'etat of 10 November 1937. It was basically devised by Francisco Campos, an intellectual disciple of Oliveira Viana, with a preliminary hearing by the future dictator and then war minister, Gen Eurico Gaspar Dutra. The justification for the coup consisted of the repelling of an imminent, imaginary, new communist subversive conspiracy. The agitation by the extreme left and extreme right exacerbated passions at the time.

Within a short time there occurred the uprising of the National Liberation Alliance, headed by the Brazilian Communist Party (November 1935); and soon, there was also a rebellion by Brazilian Integralist Action, with another coup attempt (May 1938).

The New State attempted to avert those threats. Political authoritarianism and administrative centralism resumed their spirit. The generation of Francisco Campos, trained with the conviction of Oliveira Viana that organization was more important and more urgently needed than participation, would take possession of that instrument to govern Brazil in its fashion. Gustavo Capanema, Lourival Fontes, Agamenon Magalhaes, and others started what they categorized as national regeneration, from top to bottom.

But they failed to obey Article 187 of the Constitution itself, which called for a legitimizing plebiscite. Vargas invoked Article 171, arguing the state of World War from 1939 to 1945, and the harbingers of the conflagration, as an explanation for the postponement of the referendum.

Imposed, the Charter of 1937 in fact fell on 29 October 1945, with its specter paradoxically remaining in the air during the phase of the provisional government until the conclusion of the work of the National Constituent Assembly in September 1946.

The end of World War II and the first ouster of Getulio Vargas on 24 October 1945 changed the political picture in which the election of the National Constituent Assembly convoked by Constitutional Law No 13 of 12 November 1945, issued by the president of the republic, Jose Linhares, and endorsed by his ministers, Antonio de Sampaio Doria, Pedro Aurelio de Gois Monteiro, R. Carneiro de Mendonca, Jorge Dodsworth, Armando F. Trompowsky, Mauricio Joppert da Silva, Theodureto de Camargo, Raul Leitao da Cunha, P. Leao Veloso, and J. Pires do Rio, took place.

In the terms of that law, it was stipulated that the people's representatives (federal senators and deputies) who were elected on 2 December 1945, along with the president of the republic, would meet in the Federal District 60 days after the election, in a Constituent Assembly, "to vote, with unlimited powers, on the Constitution of Brazil." When the Constitution had been promulgated, the Chamber of Deputies and the Federal Senate started operating as an ordinary Legislative Branch.

Less than 2 weeks elapsed and Constitutional Law No 15 was issued, published on 26 November 1945, determining the powers of the Constituent Assembly and the president of the Republic. It was reiterated, with modifications, that, in its function as a constituent body, the National Congress to be elected on 2 December would have unlimited powers to prepare and promulgate the country's Constitution, but with the exception of the legitimacy of the election of the president of the republic. It also ordered that, until the new basic law was promulgated, the president of the republic would exercise all the legislative and administrative powers incumbent on the Union, issuing the legislative acts that were deemed necessary. The presidential term and that of the duration of the legislature elected on the same date would be those stipulated in the Constitution. And it would be incumbent on the president of the Superior Electoral Court to install the Constituent Assembly and to preside over the following session for the election of its president. Elected on 2 December 1945, together with the president of the republic (Gen Eurico Gaspar Dutra), the Constituent Assembly members met in a preparatory session to install the Assembly on 2 February 1946, under the chairmanship of Minister Valdemar Falcao, of the STF [Federal Supreme Court] and president of the STF.

At 1500 hours on 18 September 1946, the Board of the Constituent Assembly promulgated a new Constitution. Its chairman, Senator Fernando Melo Viana, announced the new Constitution, an instrument whereby (he said) "we have emerged from a gloomy dictatorial regime, in which individual guarantees had been cancelled."

Of the 323 Constituent Assembly members, only one was not present: Getulio Vargas. Elected a senator representing Rio Grande do Sul, the president deposed on 29 October of the previous year chose to spare himself hearing in person

the harsh judgment of the Charter that he had given in 1937 and the at times very severe criticism of his political performance and his administration. The course of the 1946 Constituent Assembly obviously proceeded with a spirit of repudiation for the New State.

The constitutional crisis which was to culminate in 1945 with the ouster of a president, for the second time in our republican history, was not resolved by that act of violence, nor did it find a solution in the constitutional succession. Hence, the Dutra government, under the control of the law, was followed by another presidential campaign, dimmed by threats of another military intervention. At that time, it was not yet possible to curb events within the legal precepts. Four years had not elapsed, and a new crisis, stained with blood, upset the nation's life. The blood dried, but the sacrifice of a man did not save his people from new upheaval, in a series of consecutive incidents in 1955, 1956, 1961, and 1964.

Although it may not yet seem so to many people, it appeared that the Constitution of 1946 was the best one that we had. In fact, it became a "breeding ground" which nurtured the constitutional crisis, during which we had the suicide of President Getulio Vargas, the impediment of Vice President Joao Cafe Filho, the impediment of the president of the Chamber of Deputies, Carlos Camara de Luz, and the swearing in of the president of the Senate, Nereu Ramos, as president of the republic, in an Army barracks. One might add the military veto of Juscelino Kubitschek's candidacy, endorsed by the Army minister, Marshal Henrique Duffles Teixeira Lott; the attempted abduction in a Navy vessel; and two rebellions in the Air Force.

The election of Janio Quadros represented the failure of the political parties, disdained and defeated by him. His resignation was the symptom of the impossibility of governing without the party base and congressional backing. The battle over the taking of office, the congressional trickery, and the ouster of Joao Goulart signaled the height of the crisis, with the seizure of the government by the military authorities, who took shelter there for 21 years.

From 1964 to 1985 there was the demise of the dictatorship and the castration of national politics. Staff technicians controlled the opening and closing like valves on a machine, the creation and dissolution of the political parties, the adoption of the two-party system, and its replacement with the multi-party system. During that period, a military junta executed the amendment of 1969, after having procured the reform of 1967 from an apathetic Congress.

The worst part of it is that the government which claims to be liberal and democratic, installed on 15 March 1985, has only one law: the authoritarian legislation resulting from those constitutional molds which form rubble to be removed. This is the task of the National Constituent Assembly, meeting in February 1986.

It took a year of work. Installed on 3 September 1985, the Provisional Commission on Constitutional Studies finally completed its draft. From the time that they were sworn in by President Jose Sarney, at a session held in the Ministry of Justice, the 50 "notables" (including jurists, sociologists, businessmen, journalists, and professors) received criticism, demands, and thousands of letters, coming from all over Brazil, with suggestions on behalf of civic entities, community movements, businessmen, and even student groups. The commission was formed from a list of 33 persons left behind by President Tancredo Neves, of which the then minister of justice, Fernando Lyra, succeeded in retaining 21 names. The commission unanimously selected its chairman, jurist Afonso Arinos de Mello Franco, to be the author of the preamble for the draft; a task considered to be exalted, because it defines the goals and principles of the Constitutional Charter. MANCHETE is publishing, in its entirety and first-hand, the text of the Draft Constitution, a historic document which may outline the paths of a new Brazil.

The text is also being examined by an Editorial Committee, because it shows inconsistencies, with incomplete sentences, or absence of articles. The committee will make the necessary corrections before the approval of the final text by the Constituent Commission.

Preamble

by Afonso Arinos de Mello Franco

We, representatives of the Brazilian people, meeting under the protection of God in a National Constituent Assembly, proclaim the necessity for giving Brazil a Constitution which, at the end of the first century of the republican regime, will overcome the causes of its negative experiences, and ensure the nation a continuous era of peace, freedom, order, security, prosperity, and development, stemming from the implementation of political, economic, and social principles geared to our national formation and, like it, historically progressive.

In the international realm, Brazil, without neglecting the defense of its sovereignty, is persevering in the traditional policy of peace, through adherence to the rules of international law, respect for treaties, and cooperation with the United Nations and with the Union of American States, in all the initiatives aimed at international peace and security. the use of peaceful means to resolve controversies, and of good offices to prevent crises between states, particularly those on the continent; thereby maintaining the centuries-old juridical and diplomatic tradition that has ensured Brazil the peaceful acquisition of its invulnerable national territory.

In the internal realm, Brazil practices the social state of law, by way of an advanced, pluralistic, representative, participatory, democratic regime, leading to an economically and socially just system of government; a government of all the people, in which it is the duty of the state to foster a worthy existence for all Brazilians and foreigners settled in the country.

The following requirements, among others, are necessary for all this: the right of children and adults to education and occupational training; access for all to facilities for the preservation and recuperation of health, and to social security; obligation to work and right to employment, rest, and leisure; elimination of any discrimination based on sex, race, color, religion, or political opinion; protection and shelter for the family, with the state obliged to provide for its cohesion and stability; protection of the cultural identity of the indigenous nations; and preservation of the natural and cultural patrimony of our civilization.

Upon the ending of the first republican century, with its effectiveness, the Constitution obliterates any vestiges of past struggles, and the Brazilian state becomes the instrument of political unity within social plurality.

Prepared by a free, sovereign, Constituent Assembly, according to the democratic tradition of 1891, 1934, and 1946, enhanced by thousands of direct contributions from the people, coming from all over the country, as well as by the work of professional and cultural entities and a government commission, relying on pondered experience and confident hope, the Constitution proposes to endow Brazil with institutions in keeping with the needs of Brazilians of the present and the future.

Title I

Preliminary Provisions

Chapter I

On the Political System

Article 1. Brazil is a Federative Republic, founded upon the democratic state of law aimed at the guarantee and promotion of the person, in peaceful coexistence with all peoples.

Article 2. All power emanates from the people, and will be exercised in their behalf.

Article 3. The national symbols are the flag, the anthem, the blazon, and the coat-of-arms of the republic, adopted on the date of promulgation of this Constitution, and others specified by law.

Single paragraph. The use of national symbols by the people, in legal form, is free.

Article 4. Portuguese is the national language of Brazil.

Chapter II

On International Relations

Article 5. Brazil is governed by the following principles in international relations:

I. Defense and promotion of human rights;

II. Defense of peace, repudiation of war, arms competition, and terrorism;

III. Exchange of the technological conquests, and the scientific and cultural patrimony of mankind;

IV. Condemnation of torture and all forms of discrimination and colonialism;

V. Support for the conquests of national independence of all peoples, adhering to the principles of self-determination and respect for minorities.

Article 6. Brazil participates in the international society by means of pacts, treaties, and agreements with sovereign states, international agencies, and associations with services important to the cause of mankind and to the protection and promotion of the human person.

Article 7. International pacts and agreements are contingent on ratification by the Congress.

Single paragraph. The content of these international commitments becomes integrated into the internal order when regulatory provisions are involved, with the exception of a constitutional amendment, if that be required.

Chapter III

On Fundamental Rights and Guarantees

Article 8. Everyone has a right to the full exercise of citizenship, based on the terms of this Constitution, the state being responsible for formally and materially guaranteeing its effectiveness.

Single paragraph. All the acts and registrations necessary for the exercise of citizenship will be free of charge.

Article 9. Everyone has a right to participate in the decisions of the state and the improvement of its institutions.

Article 10. The rights and guarantees cited in this Constitution have immediate implementation.

Paragraph 1. In the absence or omission of a law provided to govern it, the judge will decide in the case, so as to attain the goals of the constitutional rule.

Paragraph 2. When the non-existence or omission of the law has been determined, precluding full efficacy of the rights and guarantees ensured by this Constitution, the Federal Supreme Court will recommend to the competent authorities the publication of rules to fill the gap.

Article 11. Everyone is equal before the law, which will punish as a crime any discrimination detrimental to human rights.

Paragraph 1. No one will be harmed or privileged through, among others, discrimination by reason of birth, race, color, sex, rural or urban occupation, religion, political or philosophical conviction, physical or mental disability, or any social circumstance or condition.

Paragraph 2. The public authorities, through specific programs, will oversee the effective implementation of social, economic, and educational equality.

Paragraph 3. A supplementary law will ensure the elimination of the defects cited in the first paragraph of this article.

Article 12. The specification of the rights and guarantees stated in this Constitution does not exclude other rights and guarantees derived from the system and the principles that it adopts, or the international declarations of which the country is a signatory.

Article 13. No one will be obliged to do or fail to do anything, except by virtue of the law.

Article 14. The law will not be prejudicial to the right acquired, the juridical act accomplished, and the matter judged.

Article 15. The law may not exclude any injury to a right from judgment by the Judiciary Branch.

Article 16. Everyone has a right to life, a worthy existence, and physical and mental integrity, as well as to the preservation of his honor, reputation, and public image.

Single paragraph. Torture of any kind constitutes an unbailable crime, not subject to amnesty or extinguishment.

Article 17. Everyone has a right of access to references and information concerning himself, recorded by public or private entities, and may demand the correction of data, the updating thereof, and the elimination of incorrect data, through a confidential judicial procedure.

Paragraph 1. The computerized recording of personal convictions, political activities, or private life, is forbidden, except for the processing of data not identified for statistical purposes.

Paragraph 2. The injury derived from the issuance or use of false records generates civil, penal, and administrative liability.

Article 18. No one may be prevented from moving about anywhere in the national territory and, during peacetime, from entering the country with his possessions, remaining in it, or leaving it, when the legal provisions have been upheld.

Article 19. Expression of opinions, religious beliefs, and philosophical and political convictions is free.

Paragraph 1. Public recreation and performances are subject to the laws for protection of the society.

Paragraph 2. Each individual will be legally responsible for the abuses that he commits in the exercise of demonstrations cited in this article.

Paragraph 3. Incitement to war, violence, or discrimination of any kind is not permitted.

Article 20. Everyone has a right to engage in religious worship, when the dignity of the person is respected.

Paragraph 1. Based on the terms of the law, religious service will be rendered to the armed and auxiliary forces, and in the collective lodging establishments, to those interested who so request, either directly or through their legal representatives, the beliefs of each individual being respected.

Paragraph 2. Cemeteries will be secular in nature, and will be managed by the municipal authorities. All religious denominations may hold their services in them. Religious associations may maintain private cemeteries in a legal manner.

Article 21. Everyone has a right to claim conscientious objection to become exempt from the military service obligation, except in wartime.

Single paragraph. The exercise of this right imposes on its holder the performance of alternative civilian service.

Article 22. Everyone has a right to procure, receive, write, print, and publish correct information, opinions, and ideas, with plurality of sources ensured, and the state or private monopoly of the news media is prohibited.

Paragraph 1. The legislation will not limit the right stipulated in this article.

Paragraph 2. The abuses committed by the press and other news media will be punished as prescribed by law.

Paragraph 3. The publication of books and periodicals will not be contingent on a permit from the public authorities.

Article 23. The execution of intellectual, artistic, or scientific activity, or the organization of economic and administrative systems, is guaranteed.

Paragraph 1. Authors have the exclusive right to publish their works which may be transmitted to heirs, based on the period of time specified by law. Inventors are assured a temporary privilege, in a legal manner, for the use of inventions, as well as ownership of industrial and commercial trademarks, and the exclusive status of the trade name, in the manner prescribed by law.

Paragraph 2. Patents of national interest will be accorded priority consideration for the country's scientific and technical development. The registration of foreign patents or trademarks is subject to their effective use, under penalty of expiration, within the period specified by law, without detriment to the holder.

Article 24. Everyone has a right to leisure and to the creative use of free time for work and for rest.

Article 25. Everyone is assured the right to education, an initiative of the community and a duty of the state, as well as that of free access to the cultural patrimony.

Single paragraph. The right to learn and teach in a legal manner is not subject to any directive of a religious, philosophical, partisan-political, or ideological nature. Free choice of educational institutions is assured.

Article 26. Everyone is assured the right to health as an initiative of the community and a duty of the state.

Article 27. Everyone has a right to assemble freely and peacefully, with no intervention by public authorities except to maintain order and to ensure individual rights and guarantees.

Article 28. Freedom of association for lawful purposes is guaranteed. No association may be compulsorily suspended or dissolved except by virtue of a court decision.

Single paragraph. No one may be compelled to enter into an association.

Article 29. Everyone has a right to establish a family, with its guarantees as a community in social life acknowledged.

Article 30. Everyone has a right to property, subject to a social function.

Single paragraph. In cases of expropriation due to public necessity or utility, or social interest, those subjected to the expropriation are assured prior, fair compensation in cash, except in the instances in Articles 17 and 22 of this Constitution (Economic Order).

Article 31. The right of inheritance is guaranteed.

Article 32. The exercise of any work, trade, or profession is free, when the conditions relating to capacity specified by law have been observed.

Paragraph 1. The law may not prevent the free practice of professions associated with direct expression of thought and arts.

Paragraph 2. The law will establish a system of exclusiveness, based upon certification or registration, only for the practice of professions involving risk to life or possible damage to the individual or the society.

Article 33. The right to strike is assured based on the terms of the Article and paragraphs 1 and 2 of this Constitution (Social Order).

Article 34. The law will assure the individualization of the penalty and its execution, within a definite system, which will include:

I. Deprivation of freedom;

II. Loss of assets, in the case of unlawful amassment of wealth in the exercise of public office, in direct or delegated performance, or in the capacity of a concessionary administrator in public service, an entity of professional representation, an association with mixed economy, or a financial institution of popular economy;

III. Fine;

IV. Engagement in social service as an alternative to imprisonment, as prescribed by law;

V. Suspension or interdiction of rights.

Paragraph 1. There will not be a death penalty, life imprisonment, forced labor, expatriation, or confiscation, except, with regard to the death penalty, when military law is applied in time of war with a foreign country.

Paragraph 2. No penalty will be imposed beyond the person of the one liable. The obligation to repair damage and loss of assets may be ordered and executed against the successors, up to the limit of the value of the assets transferred and their proceeds.

Paragraph 3. Education will be provided to the imprisoned person to rehabilitate him for social coexistence.

Paragraph 4. The deprivation of the convicted person's freedom, once the penalty has been fulfilled, is cause for a crime of civil liability on the part of the state.

Article 35. There will be no civil imprisonment for indebtedness, except in cases of obligation for support and dishonest trustee, including taxes collected or deducted from a third party.

Article 36. Everyone has a right to a healthy and ecologically balanced environment, to improvement of the quality of life, to the landscape, to the historical identity of the society and the individual, and to his protection as a consumer.

Paragraph 1. The protection of the consumer is aimed at ensuring a fair price, security regarding the quality of goods and services, inspection of the supply, and advertising of prices thereof.

Paragraph 2. The legitimate status of the Public Ministry and of any one of the people for public civic action is assured, aimed at protecting the social interests cited in this article.

Article 37. The home is the inviolable refuge of the person. No one may enter it or remain in it without the consent of the resident or a court decision, except in case of a flagrant crime, or to assist a victim of crime or disaster.

Article 38. Secrecy of correspondence and of communications in general is inviolable, except with court authorization, in the cases specified by law, based on need for criminal investigation.

Article 39. No tax will be established or increased without a law stipulating it, except in cases determined by this Constitution.

Article 40. The Tax Law will always take into consideration the citizen's capacity for paying taxes, based on Article 83 of this Constitution (Economic Order).

Article 41. Imprisoned persons have a right to respect for their physical and mental dignity and integrity, to spiritual and juridical assistance, to sociability and communicability, and to productive and paid work, as prescribed by law.

Article 42. There is no crime without a previous law defining it precisely. There is no penalty without a prior legal concurrence. The criminal law will be retroactive only when it benefits the convict.

Article 43. No one will be imprisoned except for a flagrant crime, or by written order and a decision based on grounds from the competent authority, in the cases cited by law.

Paragraph 1. The one in custody has a right to assistance from the attorney of his choice, before being queried. The silence of the accused toward police authorities is presumed to be non-incriminatory.

Paragraph 2. All those held have a right to be heard by the judge, and to the identification of those in charge of the police interrogation, which is prohibited from being held at night, or without the presence of the attorney or representative of the Public Ministry.

Paragraph 3. No one will be taken to prison or held therein if he posts bail permitted by law.

Paragraph 4. The imprisonment or detention of any person will be immediately reported to the competent judge, who will revoke it if it is illegal; and, in the cases specified by law, will call for the liability of the authority which is a co-perpetrator.

Paragraph 5. The incarceration and the premises in which the prisoner is located will be immediately reported to the family or the person indicated by the latter.

Paragraph 6. No one will be convicted or sentenced except by the competent authority and in the manner prescribed in the preceding law.

Paragraph 7. Every accused person is presumed innocent until there is a judicial declaration of guilt.

Article 44. Habeas corpus will be in effect every time anyone suffers or claims to be threatened with suffering violence or coercion involving his freedom of locomotion, based on illegality or abuse of authority.

Single paragraph. In duly justified disciplinary violations, habeas corpus will be in order only for lack of presumption regarding the formal propriety of the punishment.

Article 45. A security order will be granted to protect a certain, unquestionable right not protected by habeas corpus, whatever be the authority responsible for the illegality or abuse of authority.

Single paragraph. The security order will be admissible against acts of an agent of a body corporate of private law, when they result from the exercise of powers based on public authority.

Article 46. Any citizen, the Public Ministry, and bodies corporate qualified by law will be a legitimate party to the annulment of acts detrimental to the

public patrimony or that of an entity in which the state participates, as well as improper privileges granted to natural or juridical persons.

Single paragraph. Private enterprises which carry out public services are eligible for criminal action.

Article 47. The right of representation before the public authorities against illegality or abuse of authority, and of petition to the defense of any legitimate interests, is assured. The representation and petition are independent of the payment of taxes or guarantee of a plea.

Article 48. Habeas data will be given to the legitimate party concerned for assuring the rights protected in Article 13.

Article 49. The law will assure rapid handling of the processes in public departments and direct and direct administration, reporting to those concerned on the decisions and information pertaining to them, and the issuance of attestations required for the defense of rights and the explanation of administrative business, except, in the latter, for cases in which the public interest requires secrecy subject to judicial evaluation.

Single paragraph. The law will establish the deadline for declassification of secret documents.

Article 50. Everyone has a right to a public response, with its conveyance guaranteed under the same conditions as the injury suffered, without precluding compensation for damage caused illegitimately.

Article 51. The law will assure litigants full defense, with all the expedients inherent therein. The proceedings in criminal processes and civil suits will be in the presence of both parties in the action. There will be no privileged forum, nor judges or courts of exception.

Article 52. The institution of the jury is maintained, with the organization given it by law, provided the number of its members is always unequal, and the secrecy of the voting, the completeness of the defendant's defense, and the sovereignty of the verdicts are guaranteed. Crimes against life and crimes of the press will necessarily come under its jurisdiction.

Article 53. All the needy have a right to justice and to public judiciary assistance. The Union and the States will maintain cadres of public defenders organized professionally, and in their absence or insufficiency, they will remunerate the judicially appointed defender, directly or indirectly, through an agreement in accordance with the provisions of law.

Single paragraph. All civil acts and records will be free of charge.

Article 54. The extradition of foreigners will not be granted for a political crime or opinion, or when there are reasons to presume, under the circumstances, that the judgment of the extradited person will be influenced by his convictions.

Paragraph 1. When the crime charged subjects the extradited person to a penalty prohibited by this Constitution, the extradition will be granted only through a pledge of commutation of penalty.

Paragraph 2. The extradition of a Brazilian will not be accepted except in the case of a naturalized person, if the naturalization is subsequent to the crime that prompted the petition.

Article 55. All those persecuted by reason of their political, philosophical, or religious activities and convictions, as well as for the defense of the rights established in this Constitution, have a right to asylum. The refusal of asylum and the expulsion of the refugee or foreigner who has pleaded for it will be subject to full jurisdictional control.

Article 56. The people's defender is established, and assigned, according to the terms of the Complementary Law, to oversee the effective respect by the state authorities for the rights assured in this Constitution, checking abuses and omissions by any authority, and indicating to the competent organs the measures required for the latter's correction or punishment.

Paragraph 1. The people's defender may demand the liability of the authority who has been requisitioned, in the event of abusive omission in the adopting of the provisions required.

Paragraph 2. The Complementary Law will rule on the jurisdiction, organization, and operation of the people's defender's office, abiding by the following principles:

I. The people's defender is selected in a secret election by an absolute majority of the members of the Federal Chamber, from among candidates indicated by the civil society with well-known public respect and unblemished reputation, for a non-renewable 5-year term.

II. Attributed to the people's defender are the immunity, impediments, and procedural prerogatives of the members of the National Congress, and the salary of the ministers of the Federal Supreme Court.

III. The State Constitutions may establish the people's defender's office, in accordance with the principles recorded in this article.

Chapter IV

On Rights to Nationality

Article 57: The following are Brazilians:

I. Native-born:

- a. Those born in Brazilian territory, although of foreign parents, provided the latter are not in their country's service;
- b. Those born outside Brazilian territory, of a Brazilian father or mother, provided one of them is in the service of Brazil;
- c. Those born abroad, of a Brazilian father or mother, the latter not being in the service of Brazil, provided they are registered, and come to reside in the national territory before attaining full legal age. In this instance, when the latter has been reached, they must opt for Brazilian nationality within 4 years.

II. Naturalized:

1. Those born abroad who have been admitted into Brazil during the first 14 years of life, and have become permanently established in the national territory. To retain Brazilian nationality, they must state this unequivocally within 2 years after having reached full legal age.
2. Those born abroad who, having come to reside in the country before reaching full legal age, are taking advanced courses in a national establishment, and request nationality within 1 year after their graduation.
3. Those who have acquired Brazilian nationality in another manner.

Paragraph 1. The offices of president of the republic and vice president of the republic, president of the Federal Chamber, president of the Senate, president of the Federal Supreme Court, and people's defender are reserved exclusively for native-born Brazilians.

Paragraph 2. The Portuguese with a permanent residence in the country, if there is reciprocity on behalf of Brazilians, are attributed the rights inherent in native-born Brazilians, except for access to the presidency of the republic.

Article 58. Nationality will be lost by any Brazilian who:

1. Through voluntary naturalization acquires another nationality, but for the exceptions determined by law;
2. By virtue of a judgment, has his naturalization cancelled for having engaged in activity contrary to the national interest.

Single paragraph. The acquisition of nationality procured by defrauding the law will be annulled by a decree of the president of the republic, with suspensive appeal to the Judiciary Branch.

Article 59. Brazil may, through a treaty, allow multiple nationality with any country of interest to it.

Single paragraph. In the contingency cited in the foregoing article, the law will rule on the maintenance of nationality, regardless of reciprocity.

Chapter V

On Political Rights

Article 60. Brazilians over 18 years of age as of the election date, registered according to law, have a right to vote.

Paragraph 1. Registration and voting are compulsory for all Brazilians, but for the exceptions provided by law.

Paragraph 2. Those who do not know how to express themselves in the national language and those who have been deprived of political rights may not register.

Paragraph 3. Popular suffrage is universal and direct, and the vote is secret.

Article 61. Political rights may only be suspended or lost in the cases cited in this article.

Paragraph 1. They are suspended for criminal conviction so long as its effects last.

Paragraph 2. They are lost:

1. In the event of cancellation of naturalization by a judgment, by reason of the exercise of activity contrary to the national interest.

2. For total civil incapacity.

Paragraph 3. The law will stipulate the conditions for reacquisition of political rights.

Article 62. Those who cannot be registered are ineligible.

Single paragraph. The military are eligible, when the following conditions have been met:

- A. The member of the military who has under 5 years of service will be excluded from active service upon running as a candidate for elective office.

- B. The member of the military on active duty with 5 or more years of service will be temporarily removed from active service and assigned to deal with private interests upon running as a candidate for elective office.

C. The member of the military not excluded, if elected, will be transferred to the reserves, according to the terms of the law, in the act of certification.

Article 63. In addition to others, specified in this Constitution, the conditions for eligibility are:

I. Affiliation with a political party, for the period that the Complementary Law requires, except in the elections for president and vice president of the republic;

II. Selection at a party convention for the contest;

III. Electoral domicile in the district, for a period of 1 year.

Article 64. A Complementary Law will define the cases and periods of ineligibility, aimed, in consideration of the candidates' prior life, at preserving:

I. The democratic system;

II. Administrative integrity;

III. Regulation and legitimacy of the elections against the influence or abuse of the exercise of public function, office, or employment, under direct or indirect administration, or of the economic authorities;

IV. Moral quality for exercising the mandate.

Paragraph 1. Ineligible:

a. For the same positions are those who have for any length of time during the immediately previous term exercised the functions of president or vice president of the republic, governor and vice governor, mayor and vice mayor;

b. Are those who, within the 6 months preceding the contest, have replaced the holder of any of the positions indicated in line a;

c. Is the regular or acting occupant of a position, office, or function, the exercise of which could have an effect upsetting the normality of the elections or making their legitimacy dubious, unless he permanently dissociates himself from one or the other within the period specified by law, which may not exceed 6 nor be less than 2 months prior to the contest; with the following stipulated henceforth:

1. President of the republic, governor, or mayor - 6 months;

2. Minister of state who is not a federal deputy or senator, and secretary of state who is not a state deputy - 6 months;

3. President, director, secretary general, undersecretary, or superintendent of an organ of the direct or indirect public administration, including the public foundations and associations of mixed economy - 6 months; when he is a candidate for municipal office - 3 months;

4. In the territory of jurisdiction of the holder, the spouse and the blood relatives or similar ones up to the second degree, or by adoption, of the president of the republic, the governor of a state or territory, a mayor, or anyone who has replaced them within the 6 months preceding the contest, except if the holder of the effective mandate is a candidate for reelection.

Chapter VI

On Political Parties

Article 65. The creation of political parties is free. Their organization and operation will preserve the national sovereignty, the democratic system, party pluralism, and the fundamental rights of the human person, with the following principles observed:

I. It is the citizen's right to demand entry into a political party, according to the terms of the respective bylaws;

II. The use of paramilitary organization by the political parties is forbidden.

III. The political party will acquire status as a body corporate, through the registration of its bylaws with the Superior Electoral Court.

Article 66. The activity of the political parties must be permanent. It will be of national scope if they have attained representation in the Senate or the Federal Chamber, without precluding the deliberative functions of the state and municipal organs and the representation that they maintain on these levels, in the manner prescribed by law.

Paragraph 1. With the principles specified in this article safeguarded, a complementary law will govern the creation, merger, incorporation, abolishment, and financial inspection of the parties, and may govern general rules for their organization and operation, aimed especially at guaranteeing the internal democracy and representation of their various movements.

Paragraph 2. The law will assure the participation of all members in the political parties' organs of leadership, in the selection of their candidates, and in the preparation of the party slates.

Paragraph 3. The law will guarantee free access for the political parties to the news media organs, to publicize their programs and for the electoral campaign.

Paragraph 4. The registration will be cancelled for the party which, in two consecutive general elections for the Chamber of Deputies, does not procure support, expressed in votes, from 3 percent of the electorate, verified in a general election for the Chamber of Deputies, and distributed in at least five states, with a minimum of 2 percent of the electorate in each one of them.

Paragraph 5. The law will regulate the conditions for reacquisition of national registration by the party which has had it cancelled according to the terms of the foregoing paragraph.

Title III

On the Federal State

Chapter I

Preliminary Provisions

Article 1. The Federative Republic of Brazil is comprised of the indissoluble association of the Federal Union, the States, and the Federal District.

Article 2. Branches of the Federal Union are the Legislative, the Executive, and the Judicial, which are independent, harmonious, and coordinated among one another.

Single paragraph. Except in the cases authorized in this Constitution, all the branches are forbidden to delegate powers, and anyone invested with the function of one of the branches may not exercise that of another.

Article 3. The States may become incorporated with one another, become subdivided, or become dismembered, to be annexed to others, or to form new States, through deliberation of the respective Legislative Assemblies, a plebiscite among the population directly concerned, and approval by the National Congress, in a manner prescribed in a complementary law.

Article 4. The Federal District is the capital of the Federal Union.

Article 5. Included among the assets of the Union are:

I. The portion of vacant land essential for the defense of the borders, military fortifications and construction, and communications routes;

II. The lakes and any water courses on land under its control, or which touch more than one State, serve as a boundary with other countries, or extend to foreign territory; the seashores, oceanic and maritime islands, excluding those of Sao Luiz, Vitoria, Florianopolis, and others already occupied by the States, as well as the river and lake islands in the areas bordering other countries;

- III. The subsoil;
- IV. The continental shelf;
- V. The territorial and patrimonial sea;
- VI. The air space;
- VII. The land occupied by Indians;
- VIII. The natural underground cavities;
- IX. Those which currently belong to it, or which have been attributed to the Union through international treaties.

Single paragraph. The internal strip 100 kilometers long, parallel to the terrestrial dividing line of the national territory, which will be designated the Border Strip, is considered indispensable for the defense of the borders.

Chapter II

On the Authority of the Federal Union

Article 7 [as published]. It is incumbent on the Federal Union:

- I. To maintain relations with foreign states and to conclude treaties and conventions with them;
- II. To participate in international organizations;
- III. To declare war and to make peace;
- IV. To organize the Armed Forces, the security of the borders, and external defense;
- V. In the cases stipulated in a complementary law, to permit foreign forces to pass through the national territory, or to remain in it temporarily;
- VI. To order the state of siege, the state of alert, and federal intervention;
- VII. To authorize and oversee the production and trading of military equipment, arms, and explosives;
- VIII. To organize and maintain the federal police;
- IX. To exercise the classification of public recreation;
- X. To issue currency;

XI. To oversee operations involving credit, capital formation, and insurance;

XII. To plan and promote the national development, giving a hearing to the states and regional organs concerned;

XIII. To establish the national plans for highway systems, transportation, housing, and data processing systems;

XIV. To maintain the postal service and the national air mail;

XV. To organize permanent defense against public disasters, especially drought and floods;

XVI. To exploit, either directly or through authorization or concession:

a. The telecommunications services;

b. The electric power services and facilities of any origin or nature, abiding by the provisions of paragraph 4, Article 12 (Economic Order).

c. Air and aerospace navigation, and the use of airport infrastructure;

d. The transportation routes between seaports and river ports and national borders, or those which exceed the bounds of a state or territory;

e. Nuclear power services and facilities of any nature;

XVII. To maintain economic, administrative, financial, and cultural cooperation with the states and other bodies corporate of internal public law;

XVIII. To conclude a convention and agreement for the execution of federal laws and services;

XIX. To grant amnesty.

Article 8. It is incumbent on the Federal Union exclusively to legislate on the following matters:

I. Civil, commercial, criminal, procedural, electoral, maritime, aeronautical, space, and labor law;

II. Organization and operation of federal services;

III. Expropriation;

IV. Civilian requisitions, in case of imminent danger, and military requisitions, in wartime;

V. Water, telecommunications, data processing, postal service, electric, thermal, nuclear, or any other type of power;

VI. Monetary and measurement systems, claim and guarantee of metals;

VII. Policy on credit, exchange, and transfer of assets outside the country, foreign and interstate commerce;

VIII. Maritime, river, and lake navigation;

IX. Port system;

X. National and interstate traffic, and federal highways;

XI. Deposits, mines, other mineral resources and potential water power resources, as well as the system for their exploitation and utilization;

XII. Nationality, citizenship, and naturalization;

XIII. Indigenous population;

XIV. Emigration and immigration, entry, extradition, and expulsion of foreigners;

XV. Qualifying conditions for the practice of professions;

XVI. National symbols;

XVII. Judiciary organization, and that of the Public Ministry of the Federal District and the Territories, and administrative organization of the Territories;

XVIII. National statistical and cartographic system;

XIX. Other matters required for the exercise of the legislative authority and powers granted to the Federal Union in this Constitution.

Single paragraph. A Federal Law may, through the specification of the content and terms of exercise, authorize the States to legislate on matters within the exclusive jurisdiction of the Federal Union.

Chapter III

On the Authority Common to the Federal Union, the States, and the Municipalities

Article 9. The following powers comprise the common authority of the Federal Union, the States, and the Municipalities:

I. To oversee the defense of the Constitution, the laws, and the democratic institutions;

II. To protect the documents, works, and sites of historic or artistic value, the monuments, and the notable natural landscapes, as well as the archeological deposits and other cultural and natural assets of historic and artistic value;

III. To promote and plan the regional development;

IV. To prevent the disappearance of works of art and of other cultural and natural assets of historic and artistic value;

V. To provide means of access to culture and education, and to promote science and culture;

VI. To organize and promote the protection of public health;

VII. To protect the environment, and to combat pollution in any of its forms;

VIII. To preserve the forests, fauna, and flora;

IX. To combat poverty and the factors for social alienation of humans, promoting the social integration of the underprivileged sectors.

Article 10. The common legislation on the following is incumbent on the Federal Union and the States:

I. Financial law, tax and budgetary law;

II. Agrarian law;

III. Administrative law and process;

IV. Transit law, including traffic and transit on land routes;

V. Urban development law;

VI. Economic law;

VII. Social security and welfare;

VIII. Prison system;

IX. Public and notarial records;

X. Defense of health protection;

XI. Costs and fees to pay for forensic services;

- XIII. Commercial boards and notary's offices;
- XIII. Metallurgy;
- XIV. Forests, hunting, fishing, fauna, and nature conservation;
- XV. Education, culture, instruction, and sports;
- XVI. Production and consumption;
- XVII. Military Police personnel and weapons, and general conditions for their convocation, including mobilization;
- XVIII. Metropolitan regions and those of economic development;
- XIX. Creation, operation, and procedure of the Small Claims Court;
- XX. Responsibility for damage to the environment, to the consumer, and to the assets and rights of artistic, aesthetic, historical, tourist, and landscape value;
- XXI. Protection of the environment and control of pollution;
- XXII. Conditions for exercise of the right of assembly;
- XXIII. Protection of the historical, cultural, artistic, and landscape patrimony;
- XXIV. Judicial procedures;
- XXV. River and lake navigation;
- XXVI. Occupational health and safety;
- XXVII. Judicial assistance and public defense.

Article 11. The federal legislation in the realm of the common jurisdiction will have the designation and content of a general regulatory law, and the state legislation, those of a supplementary law.

Article 12. In the exercise of supplementary legislation, the States will observe the preexisting federal general regulatory law. In the absence of a federal law, the States will exercise the supplementary legislative authority to deal with the local circumstances.

Single paragraph. The subsequent effectiveness of a federal general regulatory law will make the supplementary state law ineffective insofar as it conflicts with the subsequent federal law.

Chapter IV

On Federal Intervention

Article 13. The Union will not intervene in the States, except:

- I. To maintain the national integrity;
- II. To repel a foreign invasion or that of one State into another;
- III. To put an end to a serious disturbance of public order;
- IV. To guarantee the free exercise of any of the state powers;
- V. To reorganize the finances of a State which:
 - a. Stops the payment of its established debt for over 2 consecutive years, except for reasons of force majeure;
 - b. Ceases to submit to the Municipalities the tax quotas or shares allocated to them;
- VI. To provide for the execution of a federal law, order or court decision; and,
- VII. To guarantee the observance of the following constitutional principles:
 - a. Republican, democratic, representative, and federative format;
 - b. Human rights;
 - c. Temporary nature of elective terms of office, the duration of which will not exceed that of the corresponding federal terms of office;
 - d. Independence, harmony, and coordination of the branches of government;
 - e. Guarantees of the Judicial Branch;
 - f. Municipal autonomy and that of the metropolitan regions;
 - g. Rendering of accounts of direct and direct public administration.

Article 14. It is incumbent on the president of the republic, having heeded the Council of State, to order the intervention.

Single paragraph. The ordering of the intervention will depend:

- a. In the case of paragraph IV of Article 13, on an appeal from the Legislative Branch or the Executive Branch, coerced or impeded, or on a requisition from

the Federal Supreme Court, if the coercion has been exercised against the Judicial Branch;

b. In the case of paragraph VI, when the execution of a judicial order or decision is involved, on a requisition from the Federal Supreme Court or the Electoral Superior Court, depending on the substance;

c. On the provision by the Federal Supreme Court of representation of the Attorney General of the Republic, in the cases of paragraph VI, first part, as well as the cases of paragraph VII, both of Article 13;

d. In the cases of paragraphs VI and VII of Article 13, the order from the president of the republic will be limited to a suspension of the execution of the act charged, if that measure suffices to restore normality in the State.

Article 15. The order for intervention, which will be submitted for the consideration of the National Congress within 5 days, will specify its scope, period of time, and conditions of execution and, if necessary, it will name the interventor.

Paragraph 1. If it is not operating, the National Congress will be convoked in a special session, within the same 5-day period, to consider the act of the president of the republic.

Paragraph 2. In the cases of line d of the foregoing article, the consideration of the order from the president of the republic by the National Congress will be dispensed with if the suspension of the act has brought about its effects.

Paragraph 3. When the reasons for the intervention have terminated, the authorities removed from their positions will return to them, unless there is a legal impediment.

Chapter V

On the States

Section I

Preliminary Provisions

Article 16. Every State will be governed by the Constitution and laws that it adopts, observing the principles established in this Constitution.

Article 17. All the powers which are not implicitly or explicitly prohibited to them by this Constitution are reserved for the States.

Article 18. The branches of the States are the Legislative, Executive, and Judicial, which are independent, harmonious, and coordinated with one another.

Article 19. The autonomy of the States includes constitutional, political, legislative, administrative, financial, and jurisdictional autonomy.

Article 20. Through an agreement or convention with the Federal Union, the States may entrust to federal officials the execution of state laws and services, or of acts and decisions of their authorities; and, reciprocally, the Union may, in the realm of its jurisdiction, assign to state officials responsibilities of the same nature, providing the necessary funding.

Article 21. The Union will provide to the States the contributions necessary for execution of activities of mutual interest or when the federal contribution becomes necessary for surmounting inadequacies in the state economy.

Article 22. Included among the States' assets are the lakes on land within their domain, as well as the rivers which have a source and mouth in them, the oceanic and maritime islands of Sao Luiz, Vitoria, Florianopolis, and others already occupied by the states, the river and lake islands, and the vacant land not included in the Federal Union's domain.

Section II

On the Legislative Branch

Article 23. The number of deputies to the Legislative Assembly will correspond to three times the State's representation in the Federal Chamber and, when the number 36 has been reached, it will be increased with as many as there are federal deputies exceeding 12.

Article 24. Every legislature will last 4 years, and the election of the state deputies will take place simultaneously with that of the federal deputies.

Article 25. The rules in this Constitution on immunity, procedural prerogatives, subsidies, loss of mandate, leave, impediments, and incorporation into the Armed Forces are applied to the state deputies.

Section III

On the Executive Branch

Article 26. The election of the governor and vice governor of the State, for a 6-year term, will take place through universal suffrage, and direct, secret vote, 90 days before the end of the terms, with an absolute majority of votes in the first balloting, and with reelection prohibited.

Article 27. The rules of this Constitution on the election, investiture, organization, authority, and operation of the Federal Executive Branch and Federal Administration apply to the state Executive Branch, insofar as they are applicable.

Section IV

On the Judicial Branch

Article 28. The States will organize their justice system, observing the articles of this Constitution and the following regulations:

I. The initial positions in the career magistracy will be filled by an act of the president of the Court of Justice, through public competition, with tests and certification, organized by the Court, and the checking of requirements set by law, including those of moral fitness and age exceeding 25 years, with the participation of the Local Council of the Organization of Brazilian Attorneys; and the law may require of the candidates a test of qualifications in a preparatory course for the magistracy.

II. The promotion of judges of the first instance will be incumbent on the Court of Justice, and will be made from one starting pay to another, based on seniority and merit.

III. Access to courts of the second instance will be granted based, alternately, on seniority and merit.

IV. In the composition of any court, a fifth of the positions will be filled by attorneys and members of the Public Ministry, all of well-known merit and unblemished reputation, with at least 10 years of forensic practice. The positions reserved for members of the Public Ministry or attorneys will be filled, respectively by members of the Public Ministry or attorneys.

V. In courts of justice with more than 25 chief judges, a special organ may be established with a minimum of 11 and a maximum of 25 members, to exercise the administrative and jurisdictional powers under the authority of the Full Court, as well as to make court decisions uniform, in the event of differences among their chambers, divisions, groups or sections. The organic law of the magistracy will establish the criteria and the intervals for partial renewal of the special organ's composition.

VI. In the event of a change in the judge's seat, the judge will be authorized to move to it or to a judicature with the same starting pay, or to procure reserve status with full pay.

VII. It is incumbent solely on the Court of Justice to try and judge members of the lower courts of the second instance, judges of a lower instance, and members of the States' Public Ministry for common crimes and those of liability, with the exception of the authority of the Electoral Justice System.

VIII. The salaries of lifelong judges will be set with a difference not exceeding 20 percent between one starting pay and another, granting those with higher starting pay no less than two thirds the salaries of chief judges; ensuring that these salaries are no less than those earned by the state governors, on

any basis; however, they may not exceed those established for the ministers of the Federal Supreme Court.

IX. It is incumbent solely on the Court of Justice to have the initiative of proposing to the State Legislative Assembly a bill to change the judicial organization and division, with amendments dissociated from the purpose of the proposal forbidden.

X. In cases of impediment, vacations, leave, or any absence, the members of the court will be replaced, whenever possible by another its its members, without a salary increase. The state law will govern the manner and cases in which judges not associated with the court may be called upon for replacement.

Article 29. The States may create:

I. Lower courts of the second instance, establishing them outside the capitals;

II. A temporary justice of the peace, provided by those with a bachelor of laws degree, whenever possible, with authority to validate and perform marriages, and to replace magistrates, except for final judgments, and to reconcile parties, with confirmation serving as a judicial executive entitlement;

III. Special courts, either single or collective, to judge small claims and criminal infractions not involving a penalty depriving one of freedom, through an oral and very brief procedure, the federal law being able to assign the judgment of the appeal to groups comprised of judges of the first instance, and to establish the unappealability of the decision. The single special courts will be provided with magisterial judges, with temporary investiture, who will be responsible for the presidency of the collective courts, as prescribed by law.

Article 30. It is incumbent on the Court of Justice to propose, exclusively, to the Legislative Branch any change in organization and in judiciary division, with amendments dissociated from the purpose of the proposal, or which cause an increase in expenses prohibited.

Section V

On the Public Ministry

Article 31. The States' Public Ministry will be organized on a career basis, in a complementary state law.

Paragraph 1. The State Public Ministry will be single, operating in the presence of the Judicial Branch and Accounting Offices of the States, the Municipalities, or equivalent organs.

Paragraph 2. The investiture of the attorney general of justice will be based on what is ordered by the Constitution or by the complementary law of each State.

Paragraph 3. The States may adopt the representation of the chief of the Public Ministry to the Court of Justice to declare the constitutionality or unconstitutionality of a state or municipal law or regulatory act, in view of the State Constitution.

Paragraph 4. From the decision specified in the foregoing paragraph, there will be a special appeal allowed from the Federal Public Ministry, when it runs counter to the Constitution or federal law.

Article 32. The judicial representation and juridical consultation of the States' administration will be incumbent exclusively on the Prosecutors' Offices organized on a career basis, with admission through competitive tests and certification.

Chapter VI

On the Federal District, the Federal Territories, the Municipalities, and the Regions

Section I

On the Federal District

Article 33. The Federal District enjoys political, legislative, administrative, and financial autonomy.

Single paragraph. The Union will supplement the Federal District with the financial resources that it needs for the maintenance of its services.

Article 34. The election of the governor and the vice governor of the Federal District will be held through universal suffrage, and direct, secret vote, for a 6-year term, 90 days before the termination of the terms, with a absolute majority of votes, in the first balloting, and reelection prohibited.

Article 35. An organic law, voted on by the Legislative Assembly, will provide for the organization of the Federal District's Legislative, Executive, and Judicial Branches and its Public Ministry, observing the regulations of Title I, Chapter V, and other principles stipulated in this Constitution.

Article 36. The Federal District will conclude an agreement or convention with the Federal Union for the purposes of Article 20 of this Constitution.

Article 37. The Federal Union will exempt the Federal District from the contributions authorized by Article 21.

Article 38. The Federal Union will not intervene in the Federal District, except in the cases and the manner cited in Articles 13 to 15 of this Constitution.

Article 39. The rules of this Constitution regarding the authority of the common legislation, specified in Article 10, paragraphs I to XXVII, apply to the Federal District.

Article 40. It will be incumbent on the Union to maintain public security in the Federal District.

Section II

On the Federal Territories

Article 41. The law will govern the administrative and judicial organization of the Federal Territories, observing the regulations in Title I, Chapter V, and other principles established in this Constitution.

Article 42. The executive function in the Federal Territory will be exercised by a governor of the territory, appointed and dismissed by the president of the republic, with approval of the nomination by the Federal Senate.

Article 43. The Federal Territories are divided into Municipalities, except when they do not allow for that division.

Single paragraph. The municipal mayors will be elected by universal suffrage, with a direct, secret vote, and a 4-year term, by an absolute majority, in the first balloting.

Article 44. The accounts of the Federal Territories' financial and budgetary administration will be inspected and judged by the Union's Accounting Office, and submitted to the National Congress within 120 days after the close of the annual fiscal year.

Article 45. In the Federal Territories, the maintenance of public order will be incumbent on police organs established by federal law.

Article 46. A complementary law will govern the creation and transformation of the Federal Territory into a State, its reintegration into the State of origin, or any of the forms specified in Article 4, meeting the conditions established therein.

Section III

On the Municipalities

Article 47. The Municipalities are territorial entities endowed with political, administrative, legislative, and financial autonomy.

Article 48. A state law will stipulate the minimal requirements for population, public revenue, and method of prior consultation of the populations directly concerned for the creation of new Municipalities, as well as their division into Districts.

Article 49. The municipal autonomy will be assured:

I. By self-organization, through the adoption of an organic law prepared by the Municipal Chamber, variable based on local circumstances, and adhering to the principles established in this Constitution and that of the State;

II. By the direct election of the mayor, vice mayor, and council members, held simultaneously throughout the entire country, by an absolute majority, in the first balloting;

III. By its own legislation and administration, insofar as its particular interest is concerned, particularly with regard to:

- a. The ordering and collection of taxes within its jurisdiction and the application of its revenue, without precluding the compulsory rendering of accounts and publishing of balance sheets, within the period set by law;
- b. Organization of local public services;
- c. Organization of the municipal territory, by means of urban development plans, observing the guidelines set in general rules for urban development;
- d. Organization of the road and transit system.

Article 50. The Municipalities may conclude an agreement and convention with other bodies corporate of internal public law, for the execution of local services and works, regulating the responsibilities and obligations of each participant.

Article 51. It is incumbent solely on the Municipality to distribute the natural gas or that procured through technical processes.

Article 52. The salaries of the mayor, the vice-mayor, and the council members will be set by the Municipal Chamber, at the end of each legislature for the following legislature, within reasonable limits and criteria established by the State Constitution.

Single paragraph. Through popular action, any person may request a revision of the level of salaries which violate the regulation in this article.

Article 53. The number of Municipal Chamber council members will be variable, as provided in the State Constitution, observing local conditions, and proportionate with the electorate of the Municipality; they may not exceed 21 council members in the Municipalities with up to 1 million inhabitants, and 33, in the other instances.

Article 54. The State's intervention in the Municipality will be regulated by the State Constitution, and may occur only when:

I. The justified debt has failed to be paid for 2 consecutive years, except by reason of force majeure;

II. Accounts due have not been rendered in the manner prescribed by law;

III. The minimum of the municipal revenue required for the maintenance and development of education has not been applied;

IV. The State's Court of Justice has made provision for representation formulated by the chief of the State Public Ministry to ensure the observance of principles specified in the State Constitution, as well as to provide for the execution of a law, or an order, or a court decision.

Article 55. The order for intervention, which will be submitted for the consideration of the State Legislative Assembly, within 5 days, will specify its scope, period, and conditions for execution and, if necessary, it will appoint the interventor.

Single paragraph. In the cases of paragraph IV, with the consideration by the Legislative Assembly excused, the order from the State governor will be limited to suspension of the execution of the act charged, if that measure suffices to restore normality.

Article 56. The financial and budgetary inspection of the Municipalities will be exercised by the Municipal Chamber, through external control, and based on internal control systems of the Municipal Executive Branch, as prescribed by law.

Paragraph 1. The external control of the Municipal Chamber will be exercised with the assistance of the State Accounting Office or another state organ to which that authority has been ascribed.

Paragraph 2. Only by a decision of two thirds of the members of the Municipal Chamber will the prior opinion of the accounts that the mayor is required to render annually, issued by the Accounting Office or by the state organ cited in the foregoing paragraph cease to prevail.

Paragraph 3. A Municipality with a population exceeding 3 million inhabitants may establish a Municipal Accounting Office.

Article 57. The council members in the territory of the Municipality are assured inviolability of their mandate, for their opinions, remarks, and votes.

Article 58. When the substance is common to the State and the Municipalities, the State will issue legislation with general regulations, and the Municipality,

the supplementary legislation, to make those laws compatible with the local circumstances.

Article 59. Special districts may be created by state law when areas have been found which do not yet meet the conditions cited in Article 45, but which already require their own administrative organizations, or when there are geoeconomic or demographic circumstances not in keeping with the formation of an urban center.

Section IV

On the Regions for Economic Development

Article 60. A Complementary Law will govern the creation, resources, plans, organization, authority, and operation of the regional organs for economic development with activity in more than one state.

Article 61. The States included within the scope of the regional development organs' activities are guaranteed effective participation in the administration of these organs, with the designation of half of the members of each entity, based on the terms of the Complementary Law.

Section V

On the Metropolitan Regions

Article 62. A Complementary Law may establish metropolitan regions, with grouping of Municipalities belonging to the same region of the State, for the organization and administration of inter-municipal public services of individual metropolitan interest, provided the provision of such services exceeds the municipal territory and requires the use of common resources.

Article 63. The following services, among others, may be considered as being of metropolitan interest:

- I. Basic sanitation;
- II. Use of the metropolitan land;
- III. Transportation, road system, and electrification;
- IV. Utilization of water resources;
- V. Protection of the environment and control of pollution;
- VI. Education and public health;
- VII. Public safety;

VIII. Other services considered to be of metropolitan interest, by state law.

Article 64. The Union, the States, and the Municipalities integrated into the Metropolitan Region will necessarily allocate in their respective budgets financial resources compatible with the planning, execution, and continuity of the metropolitan services.

Article 65. The State Constitution will govern the autonomy, organization, and authority of the Metropolitan Region, as a public, territorial entity of the Metropolitan Government, and may attribute to it:

I. Delegated power to promote the collection of taxes, improvement assessments, tariffs, and prices, based upon the rendering of public services of metropolitan interest;

II. Authority to issue regulations in matters of interest to the Region, which are not included in the jurisdiction of the State and the Municipality.

Single paragraph. Each Metropolitan Region will issue its own bylaws, respecting the Constitution and the applicable legislation.

Article 66. The Union, the States, the Municipalities, and the Metropolitan Regions will establish mechanisms for cooperation in resources and activities, to assure the execution of the metropolitan services.

Article 67. The creation of the Metropolitan Region will be subject to a popular referendum, and will be considered to be approved if it procures the favorable statement of the majority of voters in the majority of Municipalities directly concerned, on the basis of instructions from the electoral justice system.

Chapter VII

On the Tax System

Section I

Preliminary Provisions

Article 68. The tax policy is intended:

I. To provide the State with the funds necessary to finance its activities;

II. To make corrections of socioeconomic inequalities among States, Municipalities, regions, and social groups;

III. To give an incentive for national development.

Article 69. The tax system includes:

I. The taxes enumerated in Articles 72, 73, 74, and 75;

II. Remunerative taxes on expenses involving specific, divisible activities:

- a. For the performance of acts in the regular exercise of police authority;
- b. For effective rendering of public services, or for putting them at the disposal of the obligor.

III. The following special assessments:

- a. Improvement assessment;
- b. Assessments for intervention in the economic area;
- c. Social assessments to defray the expenses specified in paragraph 7 of this article;
- d. Assessment to pay for works or services resulting from the use of urban land;
- e. Assessment to eliminate or control polluting activity.

Paragraph 1. Taxes will not have a generating effect nor base of calculation inherent in excises, nor will they be graduated on the basis of the financial or economic value of the good, right, or interest of the obligor.

Paragraph 2. The proceeds from the collection of the taxes specified in line a of paragraph II and from the assessments are to be used to pay for the activities which provided grounds for them, excepting the assessment for economic intervention, the collection of which constitutes the intervention per se.

Paragraph 3. The special assessments specified in lines b and c of paragraph III may not have a generating effect nor base of calculation inherent in state or municipal levies. The stipulation in line d may not have a generating effect nor base of calculation inherent in federal and state levies; and the stipulation in line e may not have a generating effect nor base of calculation inherent in federal and municipal levies. The eventualities of incidence of the assessments specified in lines d and e will be governed by a Complementary Law.

Paragraph 4. The improvement assessment will be required of owners of real estate appraised for public works; it will have as an overall limit the cost of the works, including the amount of expenses and compensation due to possible devaluation entailed therein, and, as an individual limit, required of every taxpayer, the legal estimate of the resulting added value for real estate owned by him.

Paragraph 5. The assessment to pay for works or services resulting from the use of urban land is demandable of one who engages in acts entailing an increase in urban equipment in a particular area, and will be graduated in accordance with the cost of that increase.

Paragraph 6. A Complementary Law will determine the works and services resulting from the use of urban land, and will stipulate the criteria for gauging the respective costs and the maximum limits of their corresponding assessment.

Paragraph 7. It is incumbent solely on the Union to establish the assessments for economic intervention and the social assessments to defray welfare and corporative costs, and those of other forms of assistance. It is incumbent solely on the Municipalities to establish the assessment to pay for works or services resulting from the use of urban land. It is incumbent, concurrently, on the Union, the States, and the Municipalities to establish the assessment for elimination or control of polluting activity; but the federal assessment excludes identical state and municipal assessments, and the state assessment excludes identical municipal assessments.

Paragraph 8. A Complementary law will stipulate general tax law regulations, decide on conflicts of authority in this respect among the Union, the States, the Federal District, and the Municipalities, and regulate the constitutional limits on the power of taxation.

Paragraph 9. The cumulative collection of the assessments cited in lines a and d of paragraph III of this article is prohibited.

Paragraph 10. In the Federal Territories, the taxes attributed to the States are incumbent on the Union, and if the Territory is not divided into Municipalities, the municipal taxes, as well as the taxes attributed to the States and Municipalities, are incumbent on the Federal District.

Paragraph 11. It is incumbent on the Union to establish compulsory loans, to cope with costs stemming from a public disaster demanding federal aid or welfare that is impossible to provide with available budgetary funds. The proceeds from the collection will necessarily be used to deal with the public disaster which prompted it. The return of the compulsory loan will be made in cash, the amount of which will correspond to its real purchasing power, within a period not to exceed 5 years, reckoned from the date of its establishment; allowing, at the taxpayer's option, automatic compensation of the amount to be returned with any of his debts to the Union.

Paragraph 12. The law may authorize the Union to establish compulsory investments to cope with the cost of works that it declares a priority, which cannot be covered by budgetary appropriations or funds procured through the issue of public debt bonds freely sold on the market. The law will guarantee the liquidity of those investments.

Paragraph 13. The constitutional provisions and those of Complementary Laws on tax matters apply to the compulsory loans stipulated in paragraph 11 of this article, with the sole exception of the provisions of Article 81.

Paragraph 14. No payment in cash or convertible into it that does not constitute a penalty for an unlawful act may be compulsorily required, without observing the regulations on the establishment, increase, and collection of taxes set forth in this Constitution and Complementary Laws.

Article 70. The Union, the States, the Federal District, and the Municipalities are forbidden:

I. To establish or increase a tax unless the law stipulates it; but for the exceptions cited in this Constitution, insofar as an increase is concerned;

II. To set limits on the traffic of persons, their assets, or goods, by means of interstate or intermunicipal taxes;

III. To establish taxes on:

a. The patrimony, income or services of one to another;

b. The churches of any denomination and their adjacent establishments, essential for the full exercise of religious activities;

c. The patrimony, income, or services of political parties and educational, cultural, or scientific research institutions, those for social assistance, and closed private welfare entities, observing the requirements stipulated in a Complementary Law;

d. Books, newspapers, and periodicals, as well as the paper used to print them.

Single paragraph. The provision in line a of paragraph III applies to public local governments and foundations, insofar as the patrimony, income, and services associated with their essential purposes or derived therefrom are concerned; it does not apply to the public services provided, nor does it exempt the purchaser from the obligation to pay taxes due on real estate subject to purchase and sale.

Article 71. It is prohibited:

I. To the Union to establish a tax that is not uniform in the entire national territory, except for tax incentives established by a Complementary Law, or that entail a distinction or preference relating to any professional category or activity, State, or Municipality;

II. To the Union to tax the income from state or municipal public debt bonds, and the remuneration of public agents of the States and Municipalities at

rates higher than those set for its own debts and for those produced by its own agents;

III. To the Union, the States, the Federal District, and the Municipalities to establish a tax difference between assets of any nature, or obstacles to their circulation, by reason of the respective origin or destination.

Section II

On the Authority for Establishment of Taxes

Section III

On the Taxes of the Union

Article 72. It is incumbent on the Union to establish taxes on:

I. Imports of foreign products;

II. Export of national or nationalized products abroad;

III. Rural territorial property;

IV. Income and proceeds of any nature the generating effect of which will coincide with the end of the Union's fiscal year;

V. Special consumption, affecting products enumerated in a Complementary Law;

VI. Credit, exchange, and insurance operations, and those relating to unregistered bonds and securities;

VII. Communications services which, by their nature or size, are carried out or terminate in more than one State;

VIII. Highway transportation services which, by their nature or size, are carried out or terminate in more than one State;

IX. Production, importing, circulation, distribution, or consumption of liquid or gaseous lubricants and fuels, and electric power, a tax that will have an effect only once on any of those operations, excluding the effect on them of any other tax, with the sole exception of liquid and gaseous fuels and lubricants dealt with in paragraph III of Article 74;

X. Extraction, circulation, distribution, or consumption of the country's minerals which have been enumerated in a law, a tax that will have an effect only once on any of those operations, excluding the effect of any other tax on them;

XI. Ownership of personal property of a luxurious type, excluding that of cultural, artistic, or religious value, defined in a Complementary Law.

Paragraph 1. The tax on special consumption will have graduated quotas based on the essential nature of the products indicated in a Complementary Law, and it will not be cumulative, reducing, in each operation, the amount associated with the previous ones.

Paragraph 2. The law may use the revenue from export taxes and those on credit, exchange, and insurance operations, and those relating to unregistered bonds and securities, to form monetary or capital reserves for the financing of economic development programs.

Paragraph 3. The tax on rural territorial property will be comprised of a portion calculated on the basis of the area and market value of the land, and another determined in inverse relation to its utilization and productivity, according to criteria to be established in a Complementary Law, aimed at prompting agrarian reform and use of rural land depending on its social destination and collective interest. In either of the two types, the tax will not affect rural farm land on an area not exceeding the region's rural module, when it is cultivated, alone or with his family, by the owner who does not have possession or ownership of another landed property.

Paragraph 4. In the imminence or case of external war, the Union may temporarily establish special taxes, included within its taxation authority or not, which will be gradually eliminated when the reasons for their creation have ceased.

Paragraph 5. The law may delegate to the Executive Branch the authority to increase or reduce, under the conditions and within the limited established, the amounts of taxes on imports, exports, special consumption, and credit, exchange, and insurance operations, and those relating to unregistered securities.

Section IV

On Taxes of the States and the Federal District

Article 73. It is incumbent on the States and the Federal District to establish a tax on:

I. Purchase, by any entitlement, of assets fixed by nature or physical access, and of real rights to landed property, except that guaranteed;

II. Gifts and conveyances, "causa mortis" [because of death], of any assets or securities;

III. Operations relating to circulation of goods, carried out by producers, manufacturers, and merchants, a tax that will not be cumulative, with a

reduction, in each operation, of the amount pertaining to the previous one, occurring in the same or in another State;

IV. Intermunicipal highway transportation that does not exceed the bounds of the state;

V. Ownership of automotive vehicles, with the establishment of taxes or assessments on the respective use prohibited.

Paragraph 1. The tax on the purchase, by any entitlement, of assets fixed by nature or physical access, and of real rights to landed property, except that guaranteed, is incumbent on the State in which the asset is located; and, in the event of a pledge to purchase and sell without a change of mind clause, it has an effect on the respective transfers. The tax cited in paragraph II of this article is incumbent on the state in which the asset is located, even though the succession may be open outside of it, and, when personal property is concerned, on the one in which the property listing or registration takes place, or in which the donor has a domicile.

Paragraph 2. The tax on the purchase, by any entitlement, of assets fixed by nature or physical access, and of real rights to landed property, except that guaranteed, does not affect the transmission of goods or rights incorporated into the patrimony of a body corporate in a capital turnover, nor the transmission of goods or rights in the course of a merger, incorporation, division, or abolishment of a body corporate, except, in the case of transmission to a body corporate, if the preponderant activity of the purchaser is the trading of those goods or their commercial leasing or rental.

Paragraph 3. A Complementary Law, relating to the tax on operations pertaining to circulation of goods:

- a. May establish other categories of taxpayers, in addition to those mentioned;
- b. Will establish mechanisms for financial compensation between consigner and consignee States, based on interstate operations, or those allocating products for export.

Paragraph 4. The amount of the tax on operations involving circulation of goods will be uniform for all goods, in internal and interstate operations; the Federal Senate, through a resolution adopted at the initiative of the president of the republic, will set the maximum amounts for internal, interstate, and export operations. In interstate operations with an end consumer, the amount associated with internal operations will be applied, with the allocation to the consignee State of the portion corresponding to the difference between the amount applied and the amount associated with interstate operations.

Paragraph 5. The exemptions and other tax benefits relating to the tax on operations involving circulation of goods will be granted and revoked according

to the terms set in agreements concluded by all the States or by the members of each Geo-Economic Region, ratified by the Legislative Assemblies in the manner prescribed by a Complementary Law.

Paragraph 6. The tax on operations involving circulation of goods will not effect operations which send abroad industrialized products and others indicated in a Complementary Law.

Paragraph 7. From the amount of the tax on operations involving circulation of goods owed on operations also subject to the tax on retail sales, the amount of the latter will be deducted, in the manner prescribed in a Complementary Law.

Paragraph 8. The taxpayers who used as raw material the country's minerals subject to the single tax on the country's minerals will reduce the amount of that tax on operations involving circulation of goods, in the manner stipulated in a Complementary Law.

Paragraph 9. Business firms which used fuels, lubricants, and electric power as input for the manufacture of goods may reduce the tax cited in paragraph IX of Article 74 by the amount owed by way of the tax on operations involving circulation of goods.

Section V

On Taxes of the Municipalities

Article 74. It is incumbent on the Municipalities to establish taxes on:

I. Constructed and urban territorial property;

II. Services of any kind, not included in the tax jurisdiction of the Union or the States, which do not constitute a necessary phase in the production of goods, or of the activity taxed by the levy on highway transportation cited in paragraph IV of Article 73, and paragraph VIII of Article 72;

III. Retail sales;

IV. Leasing of personal property and commercial renting.

Paragraph 1. The maximum amount of the tax on retail sales will be set in a Complementary Law.

Paragraph 2. The amount of the tax on constructed and urban territorial property will be progressive based on the terms of the Complementary Law, depending on the number of properties of the same taxpayer and the time that has elapsed for socially suitable use, in the case of constructed property.

Section VI

On Taxes of Concurrent Jurisdiction

Article 75. The Union, the States, and the Federal District may establish other taxes in addition to those attributed to them by this Constitution, provided they do not have a generating effect or base of calculation inherent in any of the latter. The federal tax will exclude the identical state tax.

Section VII

On Shares and Distribution of Revenue

Article 76. The proceeds from the collection of the tax on income and profits of any nature, levied at the source, on revenue paid by them and their local governments, by any entitlement, and 40 percent of the proceeds from the collection of taxes on the ownership of luxurious personal property, except for assets of cultural, artistic, or religious value, belong to the States.

Article 77. Belonging to the Municipalities are:

- I. The proceeds from the collection of the tax on income and products of any nature, levied at the source, and on revenue paid by them and their local governments, by any entitlement;
- II. Eighty percent of the proceeds from the tax on rural territorial property affecting real estate located in their territory;
- III. Forty percent of the proceeds from the collection by the States of the taxes specified in Article 75;
- IV. Fifty percent of the proceeds from the collection of the tax on credit, exchange, and insurance operations, and those relating to unregistered bonds and securities;
- V. Twenty percent of the proceeds from the collection of the tax on operations involving circulation of goods, carried out in their territories;
- VI. Thirty percent of the proceeds from the collection of the tax on ownership of luxurious personal property, excluding assets of cultural, artistic or religious value.

Paragraph 1. The amounts of the shares cited in paragraphs II and III of this article will, after the deduction of the portion cited therein, be deposited, within a maximum period of 30 days after their collection, in official credit institutions, in the name of the bodies corporate of public law mentioned in them, within a period, adjusted in agreements, never exceeding 30 days.

Paragraph 2. The Union and the States will publish, in the respective official organs, by the last day of the following month, the amounts of each one of the taxes, including the additional amounts collected, as well as the sums transferred to the Municipalities.

Paragraph 3. Unless there is a prior adjustment to the contrary between the public entities concerned, the shares of some in the tax revenue of others will be calculated considering separately the reducing effect of total or partial exemptions granted by the holder of the taxes.

Article 77[as published]. From the proceeds of the collection of taxes on income and revenue of any nature and on special consumption, the Union will distribute:

I. Fourteen percent to the Participation Fund of the States and the Federal District;

II. Seventeen percent to the Participation Fund of the Municipalities;

III. Two percent to the Special Fund;

IV. One percent to the Participation Fund of the Metropolitan Regions, in the manner prescribed in a Complementary Law.

Paragraph 1. For purposes of calculating the share of the tax on income and revenue of any nature, the portions specified in Articles 76 and 77, paragraph I, will be excluded.

Paragraph 2. The Municipalities will apply to a health program 6 percent of the amount credited to them by virtue of the provision in Paragraph II of this article.

Article 78. From the proceeds of the collection of the taxes cited in Article 75, when established by the Union, the latter will distribute:

I. Thirty percent to the Participation Fund of the States and the Federal District;

II. Thirty percent to the Participation Fund of the Municipalities.

Article 79. The Union will distribute to the States, the Federal District, and the Municipalities:

I. Sixty percent of the proceeds from the collection of the single tax on production, importing, circulation, distribution, or consumption of liquid and gaseous lubricants and fuels, as well as the additions thereto, and other federal levies related to the products cited therein;

- II. Sixty percent of the proceeds from the single tax on electric power;
- III. Ninety percent of the proceeds from the collection of the single tax on the country's minerals;
- IV. Seventy percent of the tax on highway transportation, with 50 percent for the States and the Federal District, and 20 percent for the Municipalities;
- V. Fifty percent of the proceeds from the collection of the tax on credit, exchange, and insurance operations, and unregistered securities, except when they are allocated to form a reserve, according to the terms of paragraph 2 of Article 72.

Article 80. A Complementary Law will regulate:

- I. The criteria for allocation and application of the resources in the Special Fund cited in paragraph III of Article 77;
- II. The criteria for distribution of the shares specified in Articles 77, 78, and 79, and the periods for delivery of the funds to each participant, so that they may be received with maximum promptness and without any discrimination extraneous to the applicable legal regulations.

Single paragraph. It will be incumbent on the Union's Accounting Office, based on the regulations in the complementary legislation, to direct and oversee the actual delivery to their legal consignees of the shares owed to the funds cited in Articles 77, 78, and 79, and of the portion cited in paragraphs II, III, IV, and V or Article 77, demanding whatever is necessary for their prompt release and for the functional liability of whoever delays them improperly.

Article 81. There is assured to the States, with respect to the Union, and to the Municipalities, with respect to the States and the Union, their right to collect the portion to which they are entitled, by virtue of any of the forms of sharing stipulated in this Chapter, when there is a collection of less than the amount due, derived from total or partial exemption, or omission on the part of the authorized entity in its obligation to establish, initiate, or collect the tax.

Single paragraph. The municipalities may, fundamentally, object to the amount adopted for a basis of calculation of the tax on rural territorial property, when the latter differs from the local reality.

Section VIII

Final Provisions

Article 82. The laws establishing or increasing taxes, as well as those which create new possibilities for levying them, will go into effect no fewer than 90 days after their publication, except for those relating to the taxes cited in sections I and II and paragraph 4 of Article 72; the assessments cited in line b of section III of Article 69; the taxes on credit, exchange, and insurance operations, and those involving unregistered securities, cited in section VI of Article 72; and the compulsory loan or investment cited in paragraphs 11 and 12 of Article 69.

Article 83. The taxes will be personal in nature, provided that this is possible, and will be graduated in accordance with the taxpayer's economic capacity, based on criteria established in a Complementary Law, which will assure small and micro-businesses tax treatment compatible with their gross receipts.

Chapter VIII

On the Legislative Branch

Section I

General Provisions

Article 1. The Legislative Branch is exercised by the National Congress, consisting of the Chamber of Deputies and the Federal Senate.

Article 2. The National Congress will convene annually, in the capital of the Union, from 1 March to 30 June, and from 1 August to 20 December.

Paragraph 1. During the first year of the legislature, each of the Chambers will meet in preparatory sessions, starting on 1 February, to swear in their members and elect the respective boards.

Paragraph 2. In the event of dissolution of the Chamber of Deputies, the Superior Electoral Court will set the date for swearing in those elected and selecting the respective board.

Paragraph 3. The special convocation of the National Congress will be made:

- a. By the president of the Federal Senate, in the event of an order for a state of alert, state of siege, and federal intervention;
- b. By the president of the republic, when he deems it necessary;
- c. By the Standing Commission, to deliberate on a veto or petition for reconsideration, if the matter is considered of urgent national interest, or when a state of siege has been ordered;
- d. By a third of the Chamber of Deputies and the Federal Senate.

Paragraph 4. In the special legislative session, the National Congress will deliberate only on the matter for which it was convoked.

Article 3. The National Congress will meet, in a joint session, under the direction of the Senate Board, to:

- I. Install the legislative session;
- II. Prepare the common rules and regulations;
- III. Discuss and vote on the budget;
- IV. Receive the commitment of the president and vice president of the republic;
- V. Decide on a veto or petition for reconsideration;
- VI. Decide on the state of alert; approve and suspend the state of siege, or federal intervention;
- VII. Elect the Standing Commission of the National Congress;
- VIII. Deal with other cases specified in this Constitution.

Article 4. It is incumbent on each of the Chambers to prepare its internal rules and regulations, to decide on its organization, and to staff its positions and its police.

Single paragraph. The following regulatory standards will be observed:

- a. In the formation of the commissions, the proportional representation of the parties participating in the respective Chamber will be assured, insofar as possible;
- b. The Board of the Chamber of Deputies or that of the Federal Senate, notifying the authorized minister, will send directly to the heads of organs or entities subject to inspection by the National Congress or of its Houses, requests for information on a particular subject, and the response must be given within a period of 60 days, under penalty of liability;
- c. The terms of the members of the Board of either Chamber will be 2 years, and participation in the following Board is prohibited.

Article 5. Unless there is a constitutional ruling to the contrary, the deliberations of each Chamber will be adopted by a majority of votes, with the majority of its members present. The vote is personal.

Article 6. Deputies and Senators are inviolable during their terms with respect to their opinions, remarks, and votes.

Article 7. From the issuance of the certification until the installation of the following legislature, the members of the National Congress may not be imprisoned, except for the flagrant commission of an unbailable crime.

Single paragraph. In the case of the flagrant commission of an unbailable crime, the case records will be sent, within 48 hours, to the respective Chamber so that a decision may be made regarding the detention by a secret vote of the majority of its members.

Article 8. Deputies and Senators will be tried in judicial districts by the Federal Supreme Court.

Paragraph 1. The respective Chamber, through a secret vote and an absolute majority, may at any time stay the process at the Board's initiative.

Paragraph 2. When the process has been stayed, it will not be subject to prescription so long as the term lasts.

Article 9. Deputies and Senators, either civilian or military, may not be incorporated into the Armed Forces except in wartime, and through leave received from their Chamber, then remaining subject to military legislation.

Article 10. The procedural prerogatives of Senators and Deputies enlisted as witnesses will not continue if they fail to respond to the judicial summons within a period of 30 days, without just cause.

Article 11. Deputies and Senators will receive, on a monthly basis, equal fees and allowances, and assistance for annual expenses, established at the end of each legislature for the following one, and subject to the general taxes, including that on income and the special ones.

Paragraph 1. The payment of the expense assistance will be made in two portions, at the beginning and end of the regular legislative session, with the latter received only by those who have appeared at two thirds of the sessions held during the term.

Paragraph 2. The expense assistance will not be owed for the special convocations.

Article 12. Deputies and Senators may not:

I. From the issuance of the certification:

a. Sign or maintain a contract with a person of public law, a local government, public enterprise, association with mixed economy, or concessionary public service company;

b. Accept or exercise a paid position, function, or employment in the entities recorded in the foregoing line;

II. From the taking of office:

- a. Be owners, controllers, or directors of business firms which enjoy a benefit derived from a contract with a body corporate of public law or of indirect administration, or discharge a paid function in them;
- b. Occupy a position, function, or employment from which they may be dismissed "ad nutum," in the entities cited in line a of item I, or in those engaged in economic activity derived from a public service concession, authorization, or permit;
- c. Hold another federal, state, or municipal elective office;
- d. Hold the presidency of a trade union entity on any level;
- e. Sponsor a cause in which any of the entities cited in line a of item I is involved.

Article 13. The mandate will be forfeited by any Deputy or Senator:

- I. Who violates any of the prohibitions stipulated in the foregoing article;
- II. Whose behavior is declared incompatible with congressional propriety;
- III. Who fails to appear, in each annual legislative session, at a third of the regular sessions of the Chamber to which he belongs, except in the case of proven illness, leave, or mission authorized by the respective House;
- IV. Who loses his political rights, or has them suspended;
- V. When it is so ordered by the Electoral Justice System (Article 38, VII, Judicial Branch);
- VI. Who leaves the party under whose aegis he was elected, except to participate as a founder of a new party.

Paragraph 1. The abuse of the prerogatives assured to congressmen, or the reception, during the exercise of the mandate, of improper advantages, as well as in the cases determined in the internal rules and regulations, is considered incompatible with congressional propriety.

Paragraph 2. In the cases of items I, II, and V of this article, the forfeit of mandate will be decided upon by the Chamber of Deputies or the Federal Senate, by a secret vote, through a challenge from any of their members, the respective Board, or a political party.

Paragraph 3. In the case of item III, the forfeit of mandate will be declared by the respective Chamber's Board, ex officio, or through a challenge from any of its members, a political party, or the first alternate, with full defense assured.

Paragraph 4. In the event of item III, the loss of mandate may also result from a decision of the Federal Supreme Court in popular action.

Paragraph 5. In the cases specified in item IV of this article, the loss or suspension will be declared by the respective Board.

Article 14. The mandate of the Deputy or Senator invested in the office of president of the Council, minister of state, secretary of state, or secretary of the Federal District, is not lost when he has been granted leave because of illness or to deal with private interests without pay, provided that, in this eventuality, the absence does not exceed 120 days.

Paragraph 1. In cases of vacancy the alternate will be called upon to take over the functions stipulated in this article, or in cases of leave for a period exceeding 120 days.

Paragraph 2. When a vacancy occurs and there is no alternate, an election will be held to fill it if there are over 15 months until the end of the term.

Paragraph 3. With leave from his Chamber, the Deputy or Senator may perform a diplomatic mission of a temporary nature, or participate abroad in congresses, conferences or cultural missions.

Article 15. The Chamber of Deputies and the Federal Senate, in combination or separately, will create commissions to investigate a particular case for a specific period of time, through a demand from a third of their members.

Paragraph 1. The congressional investigating commissions enjoy the procedural powers of the judicial authorities.

Paragraph 2. When the work has been completed, the general report, with the conclusions and votes gained, will be published and sent to the attorney general of the republic, to demand the civil or penal liability that is fitting.

Article 16. The president of the Council and the ministers of state are obliged to appear before the Chamber of Deputies, the Federal Senate, or any of their Commissions, when either Chamber calls upon them to provide information regarding a previously determined matter.

Single paragraph. The failure to appear, without justification, entails a crime of liability, without precluding a motion for censure.

Article 17. The president of the Council and the ministers of state have access to sessions of the Congress, its Houses and Commissions, and will be heard in them according to the respective internal rules and regulations.

Article 18. During the recess of the legislative sessions, the Standing Commission of the National Congress will operate, established as required by the common regulations, and is responsible for:

- I. Seeing to respect for the prerogatives of the Legislative Branch;
- II. Approving the state of alert, and making a prior statement regarding the ordering of the state of siege;
- III. Receiving the communication of a veto or a petition for reconsideration, and publishing it, in accordance with Article 2, paragraph 3, line c;
- IV. Authorizing the president of the republic, the vice president, and the president of the Council, to leave the country;
- V. Discharging administrative duties established in the common rules and regulations.

Single paragraph. At the opening of the legislative session, the Standing Commission will submit a report on the work accomplished.

Section II

On the Chamber of Deputies

Article 19. The Chamber of Deputies consists of up to 420 representatives of the people, elected from among citizens over 21 years of age, with the exercise of their political rights, in each State, the Federal District, and the Territories.

Paragraph 1. With the maximum limit provided by this article observed, the number of Deputies per State and for the Federal District will be established by the Electoral Justice System, proportionately to the population, with the necessary readjustments so that no State or the Federal District will have fewer than six or more than 70 Deputies.

Paragraph 2. The term of the Deputies will be 4 years, except in the case of dissolution of the Chamber.

Paragraph 3. Except for that of Fernando de Noronha, every Territory will elect three Deputies.

Article 20. The electoral system will be mixed, with half of the representatives elected by majority opinion, in single-member districts, with one candidate running per party, and half by means of party slates.

Paragraph 1. The sum of the votes received in all the districts by the candidates from each party will serve as a basis for the distribution of seats, so as to assure proportional representatives of the party labels.

Paragraph 2. If the number of seats procured by a party, according to the provisions of the foregoing paragraph, is larger than that of the Deputies elected by a majority opinion, the remainder will be supplemented by candidates from the respective slate, in the order of their registration.

Paragraph 3. A Complementary Law will regulate the provisions of this article, assuring the participation of all members in the selection and arrangement of the party slate.

Article 21. It is incumbent solely on the Chamber of Deputies:

I. To declare, through two thirds of its members, the legality of the charge against the president of the republic, the president of the Council, and the ministers of state;

II. To undertake the seizure of accounts from the president of the Council when they have not been submitted to the National Congress within 60 days after the opening of the legislative session;

III. To approve, by an absolute majority, the nomination of the president of the Council, in the cases stipulated in this Constitution;

IV. To approve, by an absolute majority, a motion of censure for the president of the Council, or for one or more ministers of state;

V. To approve, by an absolute majority, a vote of confidence requested by the president of the Council;

VI. To elect the people's defender;

VII. To propose bills that will create or abolish positions in its services, and establish the respective salaries.

Section III

On the Federal Senate

Article 22. The Federal Senate consists of representatives from the States and the Federal District elected, according to the majority principle, from among citizens over 35 years of age, with the exercise of their political rights.

Paragraph 1. Each State and the Federal District will elect three Senators, with a term of 8 years.

Paragraph 2. The representation of each State and the Federal District will be renewed every 4 years, alternately, by one and two thirds.

Paragraph 3. Each Senator will be elected with an alternate.

Article 23. It is incumbent solely on the Federal Senate:

I. To judge the president of the republic and the president of the Council for crimes of liability, and the ministers of state for crimes of the same type associated with the former;

II. To try and judge the ministers of the Federal Supreme Court and the attorney general of the republic, for crimes of liability;

III. To approve previously, by a secret vote, the selection of magistrates in the cases determined by the Constitution, of the ministers of the Union's Accounting Offices, of the attorney general of the republic, and of the chiefs of a diplomatic mission of a permanent nature;

IV. To consent previously, by a secret vote, and an absolute majority, to the dismissal of the attorney general of the republic;

V. To establish, at the proposal of the president of the republic and through a resolution, overall limits on the amount of the consolidated debt of the States and Municipalities; to set and change limits on minimum and maximum time periods, interest rates, and other conditions for the bonds issued by them; and to prohibit or limit temporarily the issuance and release of any bonds by those entities;

VI. To legislate, in case of emergency, during the period in which the Chamber of Deputies is dissolved, on all matters within the Union's jurisdiction;

VII. To suspend the effectiveness, totally or partially, of a law or decree incidentally declared unconstitutional by a definitive decision of the Federal Supreme Court;

VIII. To veto the regulatory acts of the Federal Public Administration which exceed the regulatory authority or the bounds of legislative delegation;

IX. To issue resolutions; and,

X. To propose bills to create or abolish positions in its services and establish the respective salaries.

Single paragraph. In the cases specified in items I and II, it will serve as president of the Federal Senate or the Federal Supreme Court; the convicting verdict will be handed down only through a two thirds vote, and the penalty will be limited to loss of position, with disqualification for 5 years to exercise public office, without precluding action in the common courts.

Section IV

On the Powers of the Legislative Branch

Article 24. It is incumbent on the National Congress, with the approval of the president of the republic, to rule on all matters and authority of the Union, especially:

I. Tax system, collection, and distribution of revenue;

- II. Annual and multiannual budget; opening and operation of credit; public debt; forced currency issues;
- III. Establishment of the Armed Forces' personnel for peacetime;
- IV. National and regional development plans and programs;
- V. Creation of public offices and establishment of the respective salaries;
- VI. Limits of the national territory; air and maritime space; assets under the control of the Union;
- VII. Temporary transfer of the seat of Federal Government;
- VIII. Judicial organization of the Federal District and the Territories, and administrative organization of the Territories.

Article 25. It is the exclusive authority of the National Congress:

- I. To decide definitively on international treaties, conventions, and acts, including executive ones, or on any changes in them;
- II. To authorize the president of the republic to declare war and to make peace; to permit, in the cases specified in a Complementary Law, foreign forces to pass through the national territory, or to remain in it temporarily, with the concession of military bases prohibited;
- III. To authorize and approve external loans, operations, agreements, and obligations, of any type, contracted or guaranteed by the Union, the States, the Federal District, and the Municipalities, by entities under their indirect administration, or by associations under their control, which will be in effect only after the date of the legislative decree of approval;
- IV. To grant amnesty;
- V. To authorize the president and the vice president of the republic, and the president of the Council, to leave the country;
- VI. To approve and suspend the state of siege or federal intervention;
- VII. To decide on the ordering of the state of alert;
- VIII. To determine the holding of a referendum;
- IX. To approve the incorporation, subdivision, or the dismembering or creation of States or Territories;
- X. To change its seat temporarily;

XI. To establish, for enforcement during the following term, the expense assistance for members of the National Congress, as well as their representative allowances and fees, and those of the president and vice president of the republic, and the president of the Council;

XII. To judge annually the accounts submitted by the president of the Council;

XIII. To evaluate the half-yearly reports on the execution of the government's plans;

XIV. To deliberate on the extension and suspension of its sessions.

Section V

On the Legislative Process

Article 26. The legislative process includes the preparation of:

I. Complementary Laws to the Constitution;

II. Common laws;

III. Delegated laws;

IV. Legislative decrees; and,

V. Resolutions

Article 27. The Complementary Laws will be approved only when they receive an absolute majority of the votes of the members of each House of the National Congress, with the observance of the other terms for the passage of common laws.

Article 28. The discussion and voting of the bills at the initiative of the president of the republic will begin in the Chamber of Deputies.

Paragraph 1. The bills cited in this article, if so requested by the president of the republic or the president of the Council, will be included on the agenda within 90 days after their reception, and will have preference for discussion and voting over any other matter.

Paragraph 2. The president of the republic or the president of the Council may also request that the bill be considered on an emergency basis, in both Houses of the National Congress.

Article 29. The initiative for bills is incumbent on the legislative groups of the political parties, congressional groups established by regulation, a tenth of the representatives in the Chamber of Deputies or the Federal Senators, as co-authors, or the Federal Courts, in the cases specified in this Constitution.

Article 30. The bill on financial matters, at the initiative of the Chamber of Deputies or the Federal Senate, will be passed by an absolute majority in each House and, if there is a provision to increase spending, it must contain an indication of the pertinent funds.

Article 31. Amendments to bills to increase spending or the number of public offices, or affecting revenue, will be accepted only if underwritten by a minimum of a quarter of the members of the Chamber of Deputies or the Federal Senate, and their passage depends on the vote of an absolute majority in both Houses.

Article 32. A bill will be considered rejected when it receives an adverse opinion from all the commissions judging its merits, unless a tenth of the respective House members request its assessment by the plenary body.

Article 33. A bill passed by one Chamber will be reviewed by the other, in a single round of discussion and voting.

Paragraph 1. A bill adopted in one of the Chambers will be reviewed in the other which, upon passing it, will send it for sanction or promulgation.

Paragraph 2. If the bill of one Chamber is amended in the other, it will return to the first for an opinion on the change, approving it or not.

Article 34. Bills rejected or not passed may only be renewed in the same legislative session by a motion of an absolute majority of members of either Chamber.

Article 35. The president of the republic, hearing the president of the Council, or at the latter's request, is solely responsible for proposing laws which:

- I. Govern national and regional economic and social development plans;
- II. Create posts, functions or jobs in existing services, or raise their salaries;
- III. Establish or increase the personnel of the Armed Forces.

Article 36. It is incumbent on the president of the Council, with the approval of the president of the republic, to send to the National Congress the budgetary proposal of the Executive Branch.

Article 37. The public legislative initiative may be exercised by submitting bills properly coordinated, as prescribed by the Complementary Law.

Article 38. The discussion and voting of bills on a particular subject may be delegated by the National Congress to the Council of Ministers or the Special Commission of Deputies and Senator; and by either of the Chambers, to a commission of its members.

Single paragraph. Acts within the exclusive jurisdiction of the National Congress or those within the sole jurisdiction of the Chamber of Deputies or the Federal Senate will not be subject to delegation, nor will legislation: on:

I. The organization of the Judicial Branch and the Public Ministry, and the career status and guarantees of their members;

II. Individual, political, and electoral rights;

III. Budget; and,

IV. Matters reserved for a Complementary Law.

Article 39. The delegation of the Council of Ministers will be in the form of a legislative decree, which will specify its content, terms, limits, and period of exercise, and, if there is a request, it may be voted on an emergency basis.

Paragraph 1. If the delegation decides upon an evaluation of the bill, this will occur in each House, with a single vote and without amendments.

Paragraph 2. The delegation may be extended for a period equal to the one previously granted.

Paragraph 3. The bill will be submitted for sanction.

Article 40. In the legislative delegation to a Special Commission of the National Congress, based on the common rules and regulations, and abiding by the criterion of proportionality among the political parties, the bill approved by it will be sent for sanction or promulgation, unless, within a period of 10 days of its publication, a tenth of either House demands an assessment of the substance by the plenary body.

Single paragraph. When the delegation is the Commission of one of the Houses, the bill prepared may be assessed by the respective plenary body, if so required by a tenth of its members, before it is sent for review by the other.

Article 41. In the cases of Article 20, the Chamber in which the voting has been concluded will send the bill to the president of the republic who, if he consents, will sanction it.

Paragraph 1. Upon receiving the bill, the president of the republic may, within 15 business days, submit a petition for reconsideration, offering a substitute text pertinent to the substance of the bill, to be assessed, without amendments and by an absolute majority of both Houses, in a joint meeting of the National Congress, within a period of 45 days.

Paragraph 2. When the period has elapsed without deliberation, or the request for reconsideration has been denied, the bill will be redirected to the president of the republic.

Paragraph 3. If the president of the republic judges the bill, totally or partially, to be unconstitutional or contrary to the public interest, he will veto it, totally or partially, within 15 business days reckoned from the one on which he received it, notifying the president of the Federal Senate or of the National Congress Standing Committee of the reasons for the veto, within 48 hours.

Paragraph 4. A partial veto may include only the text of the article, paragraph, section, item, number, or line.

Paragraph 5. After the 15 business days cited in paragraphs 1 and 3 have elapsed, the silence of the president of the republic will signify a sanction.

Paragraph 6. When the two Houses have been convoked in a joint session to be apprised of the veto, the bill receiving the vote of two thirds of the members of each will be considered to be approved. In this case, the bill will be sent to the president of the republic for promulgation.

Paragraph 7. In the cases in paragraphs 5 and 6, if the law has not been promulgated and published within 48 hours by the president of the republic, the president of the Senate or his substitute will do so.

Article 42. During the final year of the legislature, it is forbidden to approve or sanction bills of Complementary Law or common law dealing with elections or political parties.

Article 43. In the cases of Article 21, after the final approval of the matter, legislative decrees and resolutions will be promulgated by the president of the Federal Senate.

Section VI

On the Amendment of the Constitution

Article 44. The Constitution may be amended:

Paragraph 1. A proposal for amendment will be considered if it has been submitted by the president of the republic, a minimum of a quarter of the members of the Chamber of Deputies or the Federal Senate, or over half of the State's Legislative Assemblies, each one expressing itself by an absolute majority of its members.

Paragraph 2. An amendment approved in two discussions by an absolute majority of the Chamber of Deputies and the Federal Senate in two primary, consecutive legislative sessions, will be considered as accepted.

Paragraph 3. If the amendment receives from one of the Chambers, in two discussions, the vote of two thirds of its members, it will then be submitted to the other; and, if approved by the latter through the same procedures, and by an equal majority, it will be considered to be accepted.

Paragraph 4. The amendment will be promulgated by the Boards of the Chamber of Deputies and the Federal Senate, with the respective order number.

Paragraph 5. No reform will be made to the Constitution in effect during a state of alert or of siege.

Paragraph 6. The amendment to the Constitution which has been rejected or nullified may not be renewed in the same legislative session.

Paragraph 7. The proposal for amendment aimed at abolishing the Federation or the Republic will not be subject to deliberation.

Section VI

On the Budget

Article 1. The annual budget will include the establishment of spending and provisions for revenue.

Single paragraph. In the preparation of the budget, the Executive Branch will distinguish, in specific annexes, the budget with the activities conducted through the State, the social budget, the budget of the productive sector, the monetary budget and that of the economic infrastructure for which the State is responsible, specifying the group of exemptions, incentives, and other types of tax benefits.

Article 2. The budget law will not contain any regulation dissociated from the provisions for revenue and the establishment of spending. Not included in the prohibition are:

Paragraph 1. Authorization for the opening of credit in advance of the revenue;

Paragraph 2. The regulations on the application of whatever balance there may be.

Article 3. The investments that may be executed in more than one fiscal year must be included in the multiannual budget in the manner prescribed by a Complementary Law.

Article 4. The multiannual budget will be prepared on the form of a program budget, and will contain: the sectorial programs, their sub-programs and projects and the respective cost, with the funds annually appropriated for their execution specified, and the goals to be attained in their execution determined.

Paragraph 1. The multiannual budget will indicate the budgetary and extra-budgetary funds necessary to execute the programs, sub-programs, and projects, including the financing contracted for or planned, of internal or external origin.

Paragraph 2. The multiannual budget will distinguish between the maintenance expenses and the expansion expenses, considering the investments and operating costs prompted by the investment program itself.

Article 5. The National Congress is assured, through a Mixed Commission cited in Article 11, of participation in the preparation of the multiannual and annual budget, involving, particularly, the prior discussion of the parameters used for constructing the program budget, including those relating to tax policy, development policy, and personnel policy, as well as criteria for setting priorities for new investments.

Article 6. The Executive Branch is obliged to submit half-yearly reports to the Legislative Branch regarding the execution of the annual and multiannual budget, in order to enable it to assess the performance of the administration and to propose the necessary corrections.

Article 7. The federal law will rule on the fiscal year, and the preparation and organization of the public budgets.

Paragraph 1. It is prohibited:

- a. To transfer, without prior legal authorization, funds from one budgetary appropriation to another;
- b. To grant unlimited credit;
- c. To open special or supplementary credit without prior legislative authorization and without an indication of the pertinent funds;
- d. For any of the branches of government to execute spending that exceeds the budgetary or additional credit.

Paragraph 2. The opening of special credit will be allowed only to meet unforeseeable and urgent expenses, such as those resulting from war, internal subversion, or public disaster.

Article 8. The proposal for the annual budget will include, necessarily and separately, the expenses and revenue relating to all the branches of government, organs, and funds of direct administration, and to the entities of indirect administration.

Paragraph 1. In the preparation of the budgetary proposal, the Executive Branch will include funds, programs, and projects approved by law.

Paragraph 2. The inclusion of the expenses and revenue of the entities of indirect administration in the multiannual budget will be made in individual appropriations.

Paragraph 3. No investment the execution of which exceeds a fiscal year may be initiated without prior inclusion in the multiannual budget or without a prior law to authorize it and set the amount of the appropriations to be recorded annually in the budget during the period of its execution.

Paragraph 4. The special and extraordinary credit may not have effect beyond the fiscal year in which it was authorized, unless an act of authorization has been promulgated during the final 4 months of that fiscal year; in which case, with the limits of its balances reopened, it may be in effect up until the end of the subsequent fiscal year.

Paragraph 5. Except for the taxes mentioned and the provisions of this Constitution and of complementary laws, it is prohibited to link the proceeds from the collection of any tax to a certain organ, fund, or outlay.

Article 9. The multiannual budget will assign appropriations for the execution of the plans to appreciate the value of the country's less developed regions.

Article 10. The annual budget bill will be sent by the president of the Council to the National Congress for a joint vote of both Houses, within 4 months before the beginning of the next fiscal year; if, within 30 days before the close of the fiscal year, the Legislative Branch has not returned it for sanction, it will be promulgated as law.

Paragraph 1. A Joint Commission of Senators and Deputies will be organized to examine the budget bill and to issue an opinion regarding it.

Paragraph 2. Amendments may be submitted only in the Mixed Commission.

Paragraph 3. The Commission's statement on the amendments will be conclusive and final, unless a fifth of the members of the Federal Senate and another third of the members of the Chamber of Deputies require a plenary vote of an amendment approved or rejected by the Commission.

Paragraph 4. The other regulations relating to the preparation of legislation apply to the budget bill, insofar as they do not run counter to the provisions of this Section.

Paragraph 5. The president of the Council may send a message to the National Congress to propose the modification of the budget bill so long as the voting on the part the alteration of which has been proposed is not concluded.

Article 11. The money corresponding to the appropriations for the Chamber of Deputies, the Federal Senate, and the Federal Courts will be delivered monthly, in twelfths.

Article 12. The law will govern the conditions for issuance of public debt bonds, including the type, amount, yield, and forms and periods for redemption.

Section VII

On Financial and Budgetary Oversight

Article 1. The financial and budgetary oversight of the Union will be exercised by the National Congress, through external and internal control systems of the Executive Branch, established by law.

Article 2. The Federal Accounting Office, an auxiliary organ of the National Congress, will carry out, through external control, the financial, budgetary, and operational oversight of acts of public administration.

Paragraph 1. A law at the initiative of the Federal Accounting Office will govern its organization, empowered to create delegations or organs designed to assist it in the discharge of its functions and in the decentralization of its activities.

Paragraph 2. The control will include the performance of financial, budgetary, and operational auditing duties, and the assessment of public accounts, of those responsible for revenue collection, and those regulating outlays, as well as administrators and others responsible for public assets and securities, including those of indirect administration.

Article 3. The financial, budgetary, and operational auditing will be made of the accounts of the administrative units of the Executive, Legislative, and Judicial Branches which, for this purpose, must place at the Accounting Office's disposal the accounting statements, documentation, and information requested by the latter.

Single paragraph. The assessments of the acts and accounts of administrators and other responsible persons will be based on legal, accounting, and economic studies, certified by auditing and statements on the part of administrative authorities, without precluding the oversight decided on by the Accounting Office.

Article 4. The Accounting Office will issue a preliminary opinion, within 90 days, of the accounts that the chief of the Executive Branch renders annually to the National Congress.

Article 5. The president of the republic, after approval by the Federal Senate, will appoint the Federal Accounting Office ministers, selected from among Brazilians over age 35, of unblemished reputation and with well-known legal, economic, and financial knowledge, or knowledge of public administration.

Single paragraph. The ministers will have the same guarantees, prerogatives, salaries, and impediments as the ministers of the Superior Court of Justice.

Article 6. In the composition of the Accounting Offices and equivalent organs, a fifth of the seats will be filled, in equal portions or alternately, by auditors or other legal substitutes for the holders, or members of the Public Ministry who have served at least 5 years in the office.

Article 7. The regulations specified in this Chapter apply, insofar as is fitting, to the oversight and organization of the Accounting Offices of the States, the Accounting Councils of the Municipalities, and the Accounting Offices of the Municipalities and the Federal District.

Article 8. The process and assessment of accounts will be contentious in nature, and the decisions will have the force of a verdict, becoming an executive right.

Single paragraph. An appeal of the decision will be allowed, to the National Congress, with a suspensive effect.

Article 9. The Federal Accounting Office, ex officio, or through a challenge from the Public Ministry or from the financial, budgetary, and operational auditors' offices, if an illegality is found in any outlay, including those relating to personnel and resulting from edicts, contracts, pensions, cash assets, retirements, transfers to the remunerated reserve and annuities, will be required:

I. To protect the respective patrimonial assets;

II. To stop the execution of the challenged act, if this had not been provided for.

Single paragraph. The party which considers itself to have been injured may file an appeal to the National Congress, without a suspensive effect.

Article 10. When the existence of irregularity or abuses has been discovered in the financial-budgetary management, the Federal Accounting Office will apply the penalties stipulated by law to those liable.

Article 11. In order to assure greater efficiency in the external control and the regularity of the execution of revenue and outlays, the Executive Branch, in the federal, state, municipal, and Federal District areas, will maintain internal control, aimed at:

I. Protecting the respective patrimonial assets;

II. Monitoring the execution of work programs and budgets;

III. Evaluating the results attained by the administrators, including those associated with the execution of contracts.

Single paragraph. Those responsible for the internal control, upon becoming apprised of any irregularity of abuse, will notify the Accounting Office, under penalty of solidary liability.

Article 12, The regulations for the oversight specified in this Chapter apply to the local governments and the entities to which they allocate funds.

Article 13. The public enterprises and associations with mixed economy whose capital belongs totally or partially to the government or to any entity of its indirect administration, as well as the civic association foundations established or supported by the public authorities, are subject to oversight by the Accounting Office, not precluding the control exercised by the Federal, State, Federal District, and Municipality Executive Branches.

Chapter IX

On the Executive Branch

Section I

On the President and Vice President of the Republic

Article 1. The president of the republic represents the Federative Republic of Brazil and guarantees the national unity and the free exercise of the democratic institutions.

Article 2. The vice president of the republic replaces the president in case of impediment, and succeeds him in case of vacancy.

Single paragraph. The candidate for vice president of the republic will be considered to be elected by virtue of the election of the president with whom he is registered.

Article 3. Conditions for eligibility for president and vice president of the republic are:

- I. To be a native born Brazilian;
- II. To have the exercise of political rights;
- III. To be over age 35;
- IV. Not to have incurred the instances of ineligibility specified in this Constitution.

Article 4. The term of the president and vice president of the republic is 5 years, with reelection prohibited.

Article 5. The president and vice president of the republic will be elected, throughout the country, by direct, secret, universal suffrage, 90 days before the end of the presidential term, by an absolute majority of votes, excluding those which are blank and null.

Paragraph 1. If an absolute majority is not reached, the direct election will be repeated within 30 days thereafter, in which only the two candidates with the most votes may run, and the one who receives the majority of votes, excluding those which are blank and null, will be considered to be elected.

Paragraph 2. The candidacies for president and vice president of the republic may only be registered by a political party, regardless of partisan affiliation.

Article 6. The president and vice president of the republic will take office in a session of the National Congress or, if the latter is not meeting, before the Federal Supreme Court.

Single paragraph. The president and vice president of the republic will make this commitment in the act of taking office: "I pledge to uphold, defend, and obey the Constitution of the Republic, to observe its laws, to promote the general welfare of Brazil, and to support its unity, integrity, and independence."

Article 7. If, when 30 days have elapsed since the date for the taking of office, the president or vice president of the republic have not assumed office, except by reason of force majeure or illness, the latter will be declared vacant by the Superior Electoral Court.

Single paragraph. The failure of the president of the republic to take office will not impede the vice president from doing so.

Article 8. The president and vice president of the republic may not leave the country without permission from the National Congress, under penalty of losing office.

Article 9. During the final year of the term of the president and vice president of the republic, their salaries for the following term will be set by the National Congress.

Article 10. In case of impediment, or vacancy of the president and vice president of the republic, the president of the Chamber of Deputies, the president of the Federal Senate, and the president of the Federal Supreme Court will be called upon, consecutively, to exercise the presidency.

Single paragraph. When the positions of president and vice president of the republic are vacant, an election will be held 90 days after the opening of the last vacancy, and those elected will initiate a new 6-year term.

Article 11. The president and vice president of the republic may not, after taking office, exercise a legislative mandate or any public or professional position.

Section II

On the Powers of the President of the Republic

Article 12. It is incumbent on the president of the republic, in the manner, and based on the limits stipulated in this Constitution:

- I. To appoint and dismiss the president of the Council and the ministers of state;
- II. To evaluate the government's plans, prepared by the Council of Ministers, to be submitted by him to the National Congress;
- III. To approve the budget proposal of the president of the Council;
- IV. After approval by the Federal Senate, to appoint the ministers of the Federal Supreme Court, the Federal Superior Court, the Superior Court of Justice, the Superior Courts, and the Union Accounting Office, the attorney general of the republic, and the chiefs of diplomatic missions of a permanent nature;
- V. To appoint the judges of the Federal Courts and the general counsel of the republic;
- VI. To appoint and dismiss the directors of the Central Bank of Brazil, with prior approval from the Federal Senate;
- VII. To organize his cabinet, according to the terms of the law;
- VIII. To convoke the National Congress on a special basis;
- IX. After having heard the Council of State, to dissolve the Chamber of Deputies and to call for new elections;
- X. After having heard the president of the Council, or at the latter's proposal, to initiate the legislative process within the realm of his authority;
- XI. To sanction and promulgate laws, and to have them published;
- XII. To veto a bill, partially or totally, or to request reconsideration by the National Congress;
- XIII. To convoke and preside over the Council of State and the National Defense Council;
- XIV. To appoint the governors of the territories;
- XV. To maintain relations with foreign states, and to accredit their diplomatic representatives;

XVI. To sign international treaties, conventions, and acts, "ad referendum" of the National Congress;

XVII. To declare war, following authorization from the National Congress, or, without prior authorization, in the event of foreign aggression occurring during the recess of the legislative sessions;

XVIII. To make peace, with authorization from or "ad referendum" of the National Congress;

XIX. To permit, "ad referendum" of the National Congress, in the cases specified in a Complementary Law, allied foreign forces to pass through the national territory or to operate in it temporarily, under the command of Brazilian authorities, with the granting of bases prohibited;

XX. To exercise the supreme command of the Armed Forces, to staff their general officer posts, and to appoint their commanders;

XXI. To order national mobilization, totally or partially;

XXII. To order federal intervention, having heard the Council of State, and to promote its execution;

XXIII. To authorize Brazilians to accept a pension, employment, or commission from a foreign government;

XXIV. To send a message to the National Congress on the occasion of the opening of the legislative session, describing the country's situation, and requesting the provisions that he deems necessary;

XXV. To order the state of alert, having heard the Council of Ministers and the National Defense Council, and to submit the act to the National Congress;

XXVI. To request of the National Congress, having heard the Council of Ministers and the National Defense Council, the ordering of the state of siege, or to order it.

XXVII. To determine the holding of a referendum on bills for constitutional amendments and other bills aimed at changing the structure or affecting the balance of powers, without precluding equal authority conferred upon the Houses of the National Congress, it being incumbent on the Superior Electoral Court to execute the measure;

XXVIII. To confer honorary decorations and awards;

XXIX. To exercise other powers stipulated in this Constitution.

Paragraph 1. In the case of dismissal of the president of the Council, or if a motion of censure for him has been passed by the Chamber of Deputies,

the president of the republic will appoint his interim substitute, until the appointment of another, the nomination of whom will be made within 10 days; and may request that the president of the Council who is the object of censure remain in office, jointly with the ministers of state, until the substitute takes office, in which case only acts strictly necessary for the handling of public business may be carried out.

Paragraph 2. The president of the republic may delegate to the president of the Council the powers mentioned in Sections XXI and XXVI of this article.

Section III

On the Liability of the President of the Republic

Article 13. Acts of the president which assault the Federal Constitution are crimes of liability, particularly those against:

- I. The existence of the Union;
- II. The free exercise of the Legislative Branch and the Judicial Branch, and the autonomy of the States and Municipalities;
- III. The exercise of political, individual, and social rights;
- IV. The nation's security;
- V. The integrity of the administration;
- VI. The budget law;
- VII. Compliance with laws and court decisions.

Single paragraph. These crimes will be defined in a special law which will stipulate the regulations for trial and judgment.

Article 14. After the Chamber of Deputies has declared the charge legal by a vote of two thirds of its members, the president will be subject to trial before the Federal Supreme Court, in common crimes, or before the Federal Senate, in those of liability.

Single paragraph. When the charge has been declared legal, the president will be suspended from his functions.

On the Federal Administration

Section IV

On the President of the Council

Article 15. The president of the Council will be proposed by the president of the republic to the Chamber of Deputies, after consultation with the political partisan movements comprising the majority of the National Congress.

Paragraph 1. When the proposal has been sent to the Chamber of Deputies, the latter, in 10 days, will be required to evaluate it, and it will be considered approved if it receives favorable votes from an absolute majority of its members.

Paragraph 2. If the proposal has been rejected, a new nomination must be proposed by the president of the republic within a period of 10 days, abiding by the provision in the foregoing paragraph.

Paragraph 3. If a second refusal occurs, and the Chamber of Deputies, within 5 days, has not selected the president of the Council by an absolute majority, the latter, after the Council of State has been heard, will be freely named by the president of the republic.

Article 16. The president of the republic may dismiss the president of the Council, being required, in 10 days, to propose a substitute for him to the Chamber of Deputies, in a message in which he will explain the reasons for his decision.

Paragraph 1. The dismissal of the president of the Council of Ministers will also occur:

- a. At the beginning of the legislature;
- b. If a motion of censure of the president of the Council is passed by an absolute majority of the Chamber of Deputies, by virtue of a proposal signed by at least a third of the deputies, and the voting must take place within 3 days after the submission thereof;
- c. If a vote of confidence requested by the president of the Council is refused by an absolute majority of the Chamber of Deputies.

Paragraph 2. The motion for censure may only be submitted 6 months after the swearing in of the president of the Council.

Article 17. The president of the republic may dissolve the Chamber of Deputies, having heard the Council of State, if, within a 10-day period reckoned from the receipt of the request, a vote of confidence requested by the president of the Council is refused by an absolute majority of its members.

Article 18. The Chamber of Deputies may not be dissolved during the first and last half of each legislature, when a state of alert or a state of siege is in effect, or during the negotiation of a vote of confidence requested by the president of the Council, or of a motion for censure proposed against him.

Article 19. When the Chamber of Deputies has been dissolved, the Superior Electoral Court will adopt the necessary measures to hold the election within a minimum period of 90 days from the date of dissolution.

Article 20. The president of the Council must be over 35 years of age, and may or may not be a member of the National Congress.

Article 21. The person proposed to hold the office of president of the Council of Ministers will submit his government program to the Chamber of Deputies as grounds for his approval.

Article 22. It is incumbent on the president of the Council:

I. To exercise the superior management of the federal administration, with the aid of the ministers of state;

II. To prepare national and regional development plans and programs, to be submitted to the National Congress by the president of the republic;

III. To submit nominees for the ministers of state, or a request for their dismissal, for the evaluation of the president of the republic, to be appointed or dismissed by decree;

IV. To appoint and dismiss secretaries and undersecretaries of state;

V. To issue decrees and regulations for the faithful execution of the laws;

VI. To send a budget proposal to the National Congress, with the approval of the president of the republic;

VII. To submit annually to the National Congress the accounts relating to the previous fiscal year, within 60 days after the opening of the legislative session;

VIII. To submit to the National Congress on a half-yearly basis reports on the execution of the government plans;

IX. To rule on the structure and operation of the federal administration, in the manner prescribed by law;

X. To propose to the president of the republic the bills that he deems necessary for the satisfactory management of public services;

XI. To express an opinion on the bills at the initiative of the president of the republic, as well as to propose a veto or request reconsideration of those that have been approved by the National Congress;

XII. To monitor the bills being handled in the National Congress, with the cooperation of the ministers of state to whose ministries the subject is related;

XIII. To convoke and preside over the Council of Ministers;

XIV. To provide for and abolish federal public offices, in the manner prescribed by law;

XV. To appear at either of the Houses of the National Congress or their Commissions, when called upon, based on the terms of the Constitution, or to request a day for his appearance;

XVI. To accrue any Ministry temporarily;

XVII. To exercise other powers delegated to him by the president of the republic or conferred upon him by the Constitution.

Single paragraph. The president of the Council may not leave the country without authorization from the National Congress, under penalty of losing office.

Section V

On the Council of Ministers

Article 23. The Council of Ministers is comprised of the president of the Council and the ministers of state.

Article 24. It is incumbent on the Council of Ministers to deliberate on administrative matters of a general nature, at the convocation of the president of the Council and under his chairmanship. The resolutions of the Council of Ministers will be adopted by a majority of votes, and will be contingent on the approval of the president of the Council.

Article 25. The law will determine the creation, organization, and powers of the Ministries.

Article 26. Refusal of a vote of confidence will imply dismissal of the Council of Ministers.

Article 27. The ministers of state will be selected from among Brazilians over 25 years of age, with the exercise of political rights.

Article 28. It is incumbent on the minister of state, in addition to the powers that the Constitution and the laws stipulate:

I. To guide, coordinate, and supervise the organs and entities of federal administration in the area of his authority, and to countersign the acts signed by the president of the Council;

II. To issue instructions for the execution of the laws, decrees, and regulations;

III. To submit to the president of the Council reports on the services performed in the Ministry;

IV. To exercise the powers granted or delegated to him by the president of the Council.

V. To appear before any of the Houses or Commissions of the National Congress when summoned or at the behest of the president of the Council.

Single paragraph. The ministers of state are answerable to the National Congress for the acts carried out during the management of their ministries.

Article 29. The minister of state will be dismissed when the president of the Council is dismissed, or if a motion for censure is passed by the Chamber of Deputies by an absolute majority of votes of its members; one which may not be submitted until 6 months after the minister's appointment.

Single paragraph. The motion for censure of a certain minister does not imply dismissal of the others, nor that of the president of the Council, when it is not directed toward him.

Section VI

On the Council of State

Article 30. The Council of State is the superior organ of consultation of the president of the republic, and meets under the latter's chairmanship.

Article 31. The Council of State consists of the following members;

I. The president and vice president of the republic;

II. The president of the Chamber of Deputies;

III. The president of the Federal Senate;

IV. The president of the Council of Ministers;

V. The leaders of the majority and minority in the Chamber of Deputies;

VI. Six citizens of unblemished reputation and well-known learning aged over 35 years, with two proposed by the president of the republic, two elected by the Federal Senate, and two elected by the Chamber of Deputies.

Paragraph 1. The ex officio members of the Council of State discharge their functions so long as they hold the aforementioned offices. The others will have a 6-year term, renewable by a third, as prescribed by law.

Paragraph 2. The president of the Council of Ministers will not participate in the Council of State meetings when there is a deliberation concerning him.

Article 32. It is incumbent on the Council of State to prepare its rules and regulations, and its meetings are not public.

Article 33. The members of the Council of State are sworn into office by the president of the republic.

Article 34. It is incumbent on the Council of State to pass judgment on:

I. The dissolution of the Chamber of Deputies (Article 12, VII);

II. The appointment of the president of the Council, in the instance specified in paragraph 3 of Article 15;

III. The declaration of war and the making of peace (Article 12, sections XV and XVI);

IV. The feasibility of holding referendum;

V. Federal intervention in the States;

VI. Other matters of significance, in the opinion of the president of the republic, or at the proposal of a third of its members.

Section VIII

On Public Servants

Article 1. Public offices will be accessible to all Brazilians who fill the requirements stipulated by law.

Paragraph 1. Admission to public service, based on any system, will always depend on prior approval, in a public examination based on tests, or on tests and certification, with functional access to the career assured.

Paragraph 2. Appointment to a provisional position, or one based on trust, declared by law to be of free appointment and dismissal, will be exempt from examination.

Paragraph 3. No examination will be valid for a period exceeding 4 years, reckoned from the date of approval.

Article 2. The salaries for positions in the Legislative Branch and the Judicial Branch may not exceed those paid to the Executive Branch, for equal or similar positions of authority.

Paragraph 1. Upholding the provisions of this article, any linkage or leveling of any type for the purpose of paying public service personnel is prohibited.

Paragraph 2. No public servant may receive pay exceeding that stipulated in a Complementary Law, for any reason, except in the case of accumulation.

Article 3. The paid accrual of public offices and functions is prohibited, except for:

I. That of two positions as a teacher;

II. That of one position as a teacher and another scientific or technical position;

III. That of two private positions as a physician;

Paragraph 1. In any of the instances, the accrual will be allowed only when there is compatibility of schedules.

Paragraph 2. The ban on accrual applies to positions, functions, or employment in local governments, public enterprises, and mixed economy associations.

Paragraph 3. A Complementary Law, at the exclusive initiative of the president of the Council, may stipulate, in the interests of the public service, other exceptions to the ban on accrual, limited to activities of a scientific or technical nature, or of a teaching nature, with compatibility of schedules required in any case.

Paragraph 4. The ban on accruing earnings does not apply to retired persons, with regard to the exercise of the elective mandate, that of a provisional position, a contract for the rendering of technical or specialized services, or the practice of teaching.

Article 4. The public servants admitted by examination will be stable after 2 years of service.

Single paragraph. When the position has been abolished, the stable official will remain in the paid reserve, with salary proportionate to time in service, until his compulsory assignment to another position compatible with the one that he previously occupied.

Article 5. The official will be retired:

I. For disability;

II. Compulsorily, at age 70;

III. Voluntarily, after 35 years for men, and after 30 years for women.

Paragraph 1. The periods cited in the third item are reduced by 5 years for educators.

Paragraph 2. In the case of teachers, a special law may stipulate a retirement limit exceeding that specified in section II.

Paragraph 3. The criteria and amounts for retirement and pensions will be equivalent for public, civil, and military services, respectively

Article 6. The retirement earnings will be:

I. Total, when the public employee:

a. Has the time in service required by this Constitution;

b. Is incapacitated by accident, occupational injury, or serious, contagious, or incurable illness, specified by law.

II. Proportionate to time in service in the other instances.

Paragraph 1. The earnings from inactivity will be reviewed every time, owing to a change in the currency's purchasing power, there is a change in the pay of servants on active duty, as of the same date, and in the same proportion, and also every time the position or function from which the retirement was made is converted or reclassified in legal fashion. Any benefits or advantages subsequently granted to servants on active duty will apply to those who are inactive.

Paragraph 2. Except for the provisions in the foregoing paragraph, in no instance may the earnings from inactivity exceed the pay received in active service.

Paragraph 3. The time in federal, state or municipal public service, of direct or indirect administration, will be reckoned totally for purposes of retirement and reserve status, in the manner prescribed by law.

Article 7. The federal, state, or municipal public servant, of direct or indirect administration, will exercise an elective mandate based on the following provisions:

I. In the case of a paid elective mandate, federal or state, he will be removed from his position, job, or function;

II. When invested with the mandate of a municipal mayor or council member, he will be removed from his position, job, or function, and will be authorized to opt for remuneration, provided that it is paid by an entity of direct or indirect administration, or by an enterprise controlled by the public authorities;

III. In any case wherein removal is required to exercise the mandate, his time in service will be counted, for all legal purposes, except for promotion based on merit;

IV. The Council member, in the area of direct public or indirect municipal administration, is prohibited from holding a provisional position or accepting employment or an office except through public examination.

V. Excepted from the ban in the foregoing item is the position of municipal secretary, provided the Council member is released from the exercise of the mandate;

VI. As of the launching of his candidacy or a party convocation, submitted to the Electoral Court for registration, the civil servant will be released until the day after the respective election, with his salary and benefits guaranteed.

Article 8. Dismissal will be imposed on the stable public employee:

I. By virtue of a court verdict;

II. Through an administration process wherein he has been assured full defense.

Article 9. The juridical system of public employees hired for services of a temporary nature or for duties of a specialized technical nature will be stipulated in a special law.

Article 10. Bodies corporate of public law will be answerable for the injuries that their employees cause to third parties in that capacity.

Single paragraph. The employee will be solidarily liable when he acts with deceit or guilt. In this case, the administrative entity which has made the reparation will bring retrogressive action against the employee who is liable.

Article 11. The provision in this section applies to civil servants in the three branches of the Union, and to the civil servants, as a whole, of the States, the Federal District, the Territories, and the Municipalities.

Article 12. Military ranks, with the benefits, rights, prerogatives, and duties inherent therein, are guaranteed in all fullness both to officers on active duty and to those in the reserves, and to those who are retired.

Paragraph 1. Military titles, ranks, and uniforms are exclusive to the member of the military on active duty, in the reserves, or retired.

Paragraph 2. An officer of the Armed Forces may lose his post and rank only as a result of a convicting verdict issued in a court, the penalty for which restricting individual freedom exceeds 2 years; or, in the cases specified in the law, if he is declared unworthy of officer status or incompatible with it, based on a decision of a military court of a permanent nature, during peacetime, or of a special court, in time of foreign or civil war.

Paragraph 3. The member of the military on active duty who accepts permanent public office dissociated from his career will be transferred to the reserves, with the rights and obligations specified by law.

Paragraph 4. The member of the military on active duty who accepts any non-elective temporary civilian public office, or one in a local government, public enterprise, or mixed economy association, will be attached to the respective cadre, and may only be promoted based on seniority while he remains in that situation, with his time in service counted only for that promotion, a transfer to the reserves, or retirement. After 2 years of absence, whether continuous or not, he will be transferred to the reserves, or retired, according to law.

Paragraph 5. So long as he earns pay for the temporary position, or from a local government, public enterprise, or mixed economy association, a member of the military on active duty will not be entitled to the salary and benefits of his rank, with the option assured.

Paragraph 6. The provisions of Article 6, and its paragraphs, paragraph 2 of Article 2, the single paragraph of Article 10, and Article 11 apply to the military.

Article 13. The law will determine the exceptional cases wherein the contracting by the public administration of enterprises rendering services of a permanent nature will be allowed.

Article 14. The law will govern the hearing and participation of citizens, directly or through popular organizations and civic associations, in the process of preparing administrative regulations and provisions relating to them.

Article 15. The Public Ministry must, and any citizen or political party may propose popular action for the purpose of having the admission of a public servant in violation of the provisions of this Section declared null.

Chapter X

On the Judicial Branch

Section I

Preliminary Provisions

Article 1. The Judicial Branch is exercised by the following organs:

- I. Federal Supreme Court;
- II. Supreme Court of Justice;
- III. Federal Regional Courts and federal judges;
- IV. Military courts and judges;
- V. Electoral courts and judges;

VI. Labor courts and judges;

VII. State courts and judges.

Paragraph 1. A Complementary Law, known as an Organic Law of the National Magistracy, will stipulate general rules relating to the organization, operation, rights, and obligations of the magistracy, upholding the guarantees and prohibitions specified in this Constitution or resulting therefrom.

Paragraph 2. Provided that, in the composition of any court, the selection of attorneys and members of the Public Ministry is specified, it will be incumbent on the Organization of Attorneys and the Public Ministry, as provided by Complementary Law, to organize the sextuple lists of candidates, which the court will reduce to three, to be sent to the Executive Branch; the attorneys will be selected from among those actually practicing the profession, who are up to 65 years of age.

Article 2. Except for the express restrictions of this Constitution, judges will benefit from the following guarantees:

I. Lifelong status, not forfeiting the position except through court verdict;

II. Permanence, except by reason of major public interest, in the manner cited in paragraph 3; and,

III. Irreducibility of salary, subject, however, to general taxes, including that on income, and special taxes.

Paragraph 1. In the first instance, lifelong status will be acquired after 2 years on service, during which period the judge may not lose the position except at the proposal of the court to which he is subordinate, adopted by an absolute majority of the effective members.

Paragraph 2. In promotions and access to the courts, the following will be observed:

a. In the case of seniority, to be verified by the starting pay or the grade, the competent court may only refuse the most senior judge by a vote of an absolute majority of its members, or of the special organ specified in Article , section V, repeating the voting until the appointment is settled;

b. Only after 2 years of service, at the respective starting pay and grade, may the judge be promoted, unless there is no one with such requirements to accept the vacancy, or they have been refused by an absolute majority of the court.

c. In the case of merit, the selection by the court will be made from among the judges of lower starting pay; if access to the courts is involved, the list may be comprised of judges of any starting pay, or from the lower courts.

d. The state law may stipulate, as a condition for promotion on merit, based on a particular starting pay, classification, or access to courts of the second instance, according to the same criterion, attendance at, and passing grades in a course given by a school for improvement of magistrates.

Paragraph 3. Retirement will be compulsory at age 70 or for proven disability, and optional after 30 years of public service, in all cases with total earnings, and readjusted, in the same proportion, every time the pay of magistrates on active duty is increased.

Paragraph 4. The authorized court may decide, for reasons of public interest, in a secret vote count and by a vote of an absolute majority of its effective members, the removal or reserve status of a judge of a lower classification, with total earnings, assuring his defense, and may proceed in the same manner with regard to its own judges.

Paragraph 5. The filling of the magistrate's position will become effective within 30 days of the opening of the vacancy, when contingent only on an act of the Executive Branch, or the reception by the latter of a nomination made by the authorized court.

Article 3. The salary of magistrates will be set by law, upholding the provisions of this Constitution and of the Organic Law on the National Magistracy.

Paragraph 1. The salary of ministers of the Federal Supreme Court will not be lower than that of the ministers of state, and that of the chief judges, than that of the secretaries of states, based on any entitlement.

Paragraph 2. Except for the provisions in this Constitution, and in the Organic Law on the National Magistracy, any other linkages or levelings are prohibited for magistrates, including those associated with salaries.

Article 4. The judge is forbidden, under penalty of losing his judicial position:

I. To hold any other office, except a position as public or private magistrate, and in the cases specified in this Constitution;

II. To receive, based on any entitlement or on any grounds, percentages or costs in the processes subject to his office and judgment; and,

III. To engage in partisan political activity.

Article 5. The Judicial Branch will prepare its own budget proposal to be sent to the Legislative Branch, together with that of the Executive Branch.

Paragraph 1. The transmission of the proposal is incumbent, after the other courts concerned have been heard:

a. In the federal area, including therein the justice system of the Federal District and the Territories, on the president of the Federal Supreme Court, with the court's approval;

b. In the state area, on the president of the Court of Justice, with the court's approval.

Paragraph 2. The budgetary appropriations of the Judicial Branch will be turned over to it by the Executive Branch, on a monthly basis, in twelfths.

Article 6. Only by a vote of an absolute majority of its members, the respective special organ of the Superior Court of Justice, in the competent specialized section, may the courts declare the unconstitutionality of a law or regulatory act of the public authority.

Article 7. It is incumbent on the courts:

I. To elect their presidents and other officials;

II. To organize their auxiliary services and those of the subordinate law courts, filling their positions; to propose directly to the Legislative Branch the creation or abolishment of positions and the setting of the respective salaries;

III. To prepare their internal rules and regulations, stipulating therein the authority of their isolated chambers or divisions, groups, sections, or other organs with jurisdictional or administrative functions;

IV. To grant leave and vacations, as prescribed by law, to their members and to the judges and officials immediately subordinate to them.

Article 8. Only by a vote of the absolute majority of the members of the respective special organ may the courts declare the unconstitutionality of a law or regulatory act of the public authority.

Article 9. Access to jurisdiction is free of charge, with the sole exception of payment of the procedural costs at the conclusion by the loser in a suit.

Article 10. A Complementary Law may create Administrative Courts, without a jurisdictional function, to resolve tax and social security matters, or those relating to the legal system for public servants, and to allow the losing party to demand, originally, of the authorized judiciary court, a review of the legality of the decision handed down.

Single paragraph. When required for coming to trial, the prior exhaustion of administrative expedients will be free of charge, and may not be made contingent on a guarantee to file and prosecute. The lack of a final administrative decision in 120 days will allow immediate judgment of the action.

Article 11. The payments owed by the Federal, State, or Municipal Treasury, by virtue of a court verdict, will be made in the order of submission of the

mandamuses and charged to the respective credits, with the designation of cases or persons in budget appropriations and extra-budgetary credits opened for that purpose prohibited.

Paragraph 1. Inclusion in the budget of public law entities of a sum required to pay their debts specified in judicial mandamuses submitted up to 1 July, the date when the amounts thereof will be updated, is compulsory. The payment will be made, compulsorily, by the end of the next fiscal year.

Paragraph 2. The budget appropriations and credits opened will be consigned to the Judicial Branch, with the respective sums collected from the authorized department. The president of the court issuing the decision for attachment must determine the payment, based on the potential of the deposit, and authorize confiscation of the amount required to pay the debt, at the demand of the creditor whose right of precedence has been by-passed, after the chief of the Public Ministry has been heard.

Section II

On the Federal Supreme Court

Article 12. The Federal Supreme Court has its seat in the capital of the Union, and jurisdiction in the entire national territory.

Single paragraph. The members of the Federal Supreme Court will be appointed by the president of the republic, after approval by the Federal Senate, from among citizens aged over 35 and under 65, with notable legal learning and unblemished reputation.

Article 13. It is incumbent on the Federal Supreme Court:

I. To prosecute and judge, originally:

- a. In common crimes, the president of the republic, the vice president of the Council and the ministers of state, its own ministers, and the Deputies and Senators, the attorney general of the republic, and the people's defender;
- b. In common crimes and those of liability, the ministers of state, the members of the Superior Court of Justice, the Superior Courts, and the Union Accounting Office, the chief judges of the courts of justice of the States, the Federal District, and the Territories, and chiefs of permanent diplomatic missions;
- c. Litigation between foreign states or international agencies and the Union, the States, the Federal District, or the Territories;
- d. Cases and conflicts among the Union and the States, and the Federal District, or among one another, including the respective organs of indirect administration;
- e. Conflicts of jurisdiction between the Superior Court of Justice and the Superior Courts of the Union, or between the latter and any other court;

f. Conflicts of authority between Union administrative and judicial authorities, or between judicial authorities of one State and administrative authorities of another, or of the Federal District, or between those of the latter and those of the Union;

g. Extradition sought by a foreign state, approval of foreign decisions, and granting of exequatur for letters rogatory, the latter possibly conferred on its president, based on the terms of the internal rules and regulations;

h. Habeas corpus, when the co-participant or object of the action is a court, authority, or official whose acts are directly subject to Federal Supreme Court jurisdiction, or a crime subject to the same jurisdiction, in a single suit, is involved, and also when there is risk of violence being consummated before another judge or court can hear the petition;

i. Security orders or habeas corpus against acts of the president of the republic, the president of the Council of Ministers, the ministers of state, the Boards of the Chamber and Federal Senate, the Federal Supreme Court, the National Council of the Magistracy, the Union Accounting Office, or their presidents, and of the attorney general of the republic and the people's defender;

j. Representation of the attorney general of the republic, in the cases stipulated in this Constitution;

l. Popular action;

m. Criminal rehearings and annulling action of its judicial districts;

n. Execution of decisions, in cases within its original jurisdiction, with delegation of procedural acts allowed;

o. Cases tried before any judges and courts, the transfer of which to a higher court is guaranteed, at the request of the attorney general of the republic, when there is immediate risk of serious damage to public order, health, security, or finances, so as to halt the effects of the decision granted, and so that the full information on the dispute may be returned to it;

II. To judge in an appeal before execution of judgment:

a. Habeas corpus decided in a single or final suit by the Superior Court of Justice and the Superior Courts of the Union, if the decision is denying;

b. Security orders or habeas corpus decided in a single suit by the Superior Court of Justice and the Superior Courts of the Union, if the decision is denying.

c. Political crimes;

d. Cases wherein foreign states or an international agency, on the one hand, and a Municipality or person living or domiciled in the country, on the other, are parties.

III. To judge, by appeal after execution of judgment, the cases decided in a single or final suit by other courts, when the appealed decision:

- a. Runs counter to a provision of this Constitution;
- b. Declares the unconstitutionality of a federal treaty or law
- c. Judges as valid a law or act of the local government that has been contested on the basis of the Constitution.

Single paragraph. An appeal after execution of judgment will also be legal in the same cases wherein appeal before execution of judgment is legal against final decisions of the Superior Court of Justice and the Superior Courts of the Union, when the Federal Supreme Court deems the federal matter that has been resolved important. The reason for rejection or acceptance of the argument concerning importance will be made public.

Article 14. The Federal Supreme Court's internal rules and regulations will, observing the Organic Law of the National Magistracy, stipulate the process of legal procedures within its original or appeal authority, and the argument regarding importance of a federal matter.

Section III

On the National Council of the Magistracy

Article 15. The National Council of the Magistracy, with seat in the capital of the Union and jurisdiction in the entire national territory, consists of four Federal Supreme Court ministers, one Superior Court of Justice minister, one chief judge of a Court of Justice of the States, and one representative of the Organization of Brazilian Attorneys' Federal Council, elected by the OAB, to serve for a certain period during which it will be incompatible with the practice of attorneyship.

Paragraph 1. The Council is responsible for hearing claims against members of the courts, without precluding the latter's disciplinary authority, and it may reconsider disciplinary processes against judges of the first instance, to determine the reserve status of both.

Paragraph 2. The attorney general of the republic will officiate with the Council.

Section IV

On the Superior Court of Justice

Article 16. The Superior Court of Justice, with seat in the capital of the Union and jurisdiction in the entire national territory, consists of at least 36 ministers, as stipulated in a Complementary Law.

Paragraph 1. The ministers of the Superior Court of Justice will be appointed by the president of the republic from among Brazilians over age 35 with notable

legal learning and unblemished reputation, after the selection has been approved by the Federal Senate.

- a. A third from among judges of the common federal justice system;
- b. A third from among judges of the State or Federal District justice system;
- c. A third, in equal shares, from among attorneys and members of the Federal or State Public ministry, or that of the Federal District.

Paragraph 2. The court will operate as a plenary body, or divided into specialized sections and groups.

Article 17. It is incumbent on the Superior Court of Justice:

I. To try and judge, originally:

- a. Members of the Federal Regional Courts, the Regional Electoral and Labor Courts, and those of the Union Public Ministry who officiate before courts;
- b. Security orders and habeas data against an act of the court itself, or of its president;
- c. Habeas corpus when the co-participant or object is any of the persons mentioned in letter a of this article;
- d. Jurisdictional conflicts between judges and the Federal Regional Courts; between judges and the State and Federal District Courts, and those of the Territories; between federal judges subordinate to the various courts; and between judges or various State Courts, including those of the Federal District and the Territories;
- e. Criminal rehearings and annulling action of its judicial districts;

II. To judge in an appeal before execution of judgment:

- a. Habeas corpus decided in a single or final suit by the Federal Regional Courts or the State and Federal District Courts, and those of the Territories, when the decision is denying;

III. To judge, in an appeal after execution of judgment, cases decided in a single or final suit by the Federal Regional Courts or the State and Federal District Courts, and those of the Territories, when the decision appealed:

- a. Runs counter to a federal treaty or law, or denies it effectiveness;
- b. Judges as valid a law or act of the local government that has been contested on the basis of the federal law; and,

c. Gives the federal law an interpretation different from that given it by another court, or the Superior Court of Justice itself, or the Federal Supreme Court.

Single paragraph. When an appeal before execution of judgment and an appeal after execution of judgment are filed against the same decision, the judgment of the latter will await the final decision of the Superior Court of Justice, provided the latter can nullify the appeal after execution of judgment.

Article 18. The internal rules and regulations of the Superior Court of Justice will, observing the Organic Law of the National Magistracy, stipulate the process of the legal procedures within its original or appeal authority.

Section V

On the Federal Regional Courts and Federal Judges

Article 19. The Federal Regional Courts are comprised of a minimum of 15 judges, appointed by the president of the republic from among Brazilians over age 30:

- I. A fifth from among attorneys and members of the Federal Public Ministry;
- II. The rest through promotion of federal judges with over 5 years of practice, half based on seniority, and the other half based on merit.

Single paragraph. The Organic Law of the National Magistracy, when it so permits, will instruct the removal of a judge from one Federal Regional Court to another.

Article 20. The Federal Justice Council will operate with the Federal Regional Court, with seat in the Federal District, and in its composition there will be judges from the others; incumbent upon it will be the administration and instruction of the Common Federal Justice system of the first instance, based on the terms of a Complementary Law.

Article 21. It is incumbent on the Federal Regional Courts:

- I. To try and judge, originally:
 - a. The federal judges of the area within their jurisdiction, including those of the Military and Labor Justice System, in common crimes and those of liability, and the members of the Public Ministry of the Union;
 - b. The criminal rehearings and denying acts of its judicial districts or of the region's federal judges;
 - c. The security orders and habeas data against an act of the president of the same court, its sections and groups, or a federal judge;

- d. The habeas corpus, when the co-participant is a federal judge;
- e. The conflicts of jurisdiction between federal judges subordinate to the court, or between its sections and groups;
- f. The review of the decisions handed down by the Administrative Courts.

II. To judge, in an appeal phase, the cases decided by federal judges in the area of their jurisdiction.

Article 22. The federal judge positions will be filled through a public examination with tests and certification, and verification of moral suitability and of other requirements set by law, procedures that are organized by the Federal Council of Justice, with the cooperation of the Organization of Brazilian Attorneys.

Single paragraph. The law may assign to federal judges exclusively substitute duties in one or more judicial sections, and also those of aide to certified judges of jurisdictions.

Article 23. Each State, as well as the Federal District, will constitute at least one judicial section, with seat in the respective capital.

Paragraph 1. Observing the criteria established in a Complementary Law, judicial sections or jurisdictions of the Federal justice system may be created outside the state capitals, taking into account, among other factors, the demographic density, the economic development, and the existence of ports or airports with major traffic in the region.

Paragraph 2. A Complementary Law will provide for the compulsory increase in Federal justice system jurisdictions, based on the statistical verification of the increase in numbers of litigations, by an act of the Council of Federal Justice.

Paragraph 3. In the Territories, the jurisdiction and authority entrusted to the federal judges will be incumbent on the judges in the local justice system, in the manner prescribed by law. The Territory of Fernando de Noronha will be included in the judicial section of the State of Pernambuco.

Article 24. It is incumbent on the federal judges to try and judge:

I. The cases in which the Union, a local government entity, or a federal public enterprise are concerned in the capacity of principals, defendants, observers, or adversaries, except those involving bankruptcy and those subject to the electoral justice system and the labor justice system;

II. The cases between a foreign state or international agency and Municipalities or a person domiciled or residing in Brazil;

III. The cases based on a treaty or contract of the Union with a foreign state or international agency;

IV. The political crimes and penal infractions perpetrated to the detriment of goods, services, or interests of the Union or its local government entities or public enterprises, excluding breaches of contract, and with the exception of those within the jurisdiction of the military justice and electoral justice systems;

V. The crimes specified in an international treaty or convention wherein, the execution having begun in the country, its result occurred or was intended to occur abroad; or, reciprocally, when begun abroad, its result occurred or was intended to occur in Brazil;

VI. The crimes against labor organization and, in the cases stipulated by law, against the national financial system and the financial-economic order;

VII. The habeas corpus in criminal matters within their jurisdiction, or when the constraint comes from an authority whose acts are not directly subject to another jurisdiction;

VIII. The security orders and habeas corpus against an act of a federal authority, except for the cases within the jurisdiction of the Federal Courts;

IX. The crimes committed aboard ships or airplanes, except for those within the jurisdiction of the military justice system;

X. The crimes of irregular entry or stay from abroad, the execution of letters rogatory, after exequatur, and of foreign verdict, after confirmation; the cases relating to nationality, including the respective option, and naturalization; and,

XI. The matters relating to Agrarian Law, defined in a Complementary Law.

Paragraph 1. The cases wherein the Union is a principal will be appraised in the capital of the State or Territory in which the other party has a domicile; those brought against the Union may be appraised in the capital of the State or Territory in which the principal is domiciled; and in the capital of the State in which the act or deed which originated the claim occurred, or where the matter is situated, or also in the Federal District.

Paragraph 2. The cases brought before other judges, if the Union intervenes in them, as observer or adversary, will come under the jurisdiction of the respective federal judge.

Paragraph 3. The cases in which a social security institution is a party, and the object of which is a benefit of a pecuniary nature will be tried and judged by the State justice system, provided the district is not the seat of jurisdiction of the federal court of law; the appeal, if it is in order, must be filed by the competent Federal Regional Court.

Article 25. The law may create federal jurisdictions of the Tax Justice System, staffed by federal judges selected by means of a specialization course.

Single paragraph. An appeal will be in order of the decisions of the federal judges of the Tax Justice System to the Federal Regional Courts, in which specialized sections or groups will also be organized.

Article 26. The law will create regional jurisdictions of the Agrarian Justice System (Article 24, section XI) the seats of which may be transferred by the Council of Federal Justice, with removal of their holders, who may be assigned to the positions through a special public examination or a specialization course for federal judges. Representatives of rural landholders and workers may participate in settlements among parties and hearing of suits, in the manner prescribed by law.

Single paragraph. An appeal will be in order of the decisions of federal judges of the Agrarian Justice System to the Federal Regional Courts, in which specialized sections or groups will be organized.

Article 27. The law may allow fiscal lawsuits and others, as defined, to be tried in the interior districts in which the other party has a domicile, before the State or Territory Justice System, with an appeal to the competent Federal Regional Court.

Section VI

On the Military Courts and Judges

Article 28. The Superior Military Court and the lower courts and judges established by law are organs of the Military Justice System.

Article 29. The Superior Military Court will be comprised of 11 lifelong ministers appointed by the president of the republic, after the selection has been approved by the Federal Senate, two from among general officers on active duty in the Navy, three from among general officers on active duty in the Army, two from among general officers on active duty in the Air Force, and four from among civilians.

Paragraph 1. The civilian ministers, selected by the president of the republic, over age 35, will be:

- a. Two attorneys, with well-known legal learning and moral suitability, and with over 10 years of forensic practice; and,
- b. Two, one of whom will be chosen from among judge advocates, and the other, from among members of the Military Justice System's Public Ministry.

Paragraph 2. The military ministers and magistrates of the Superior Military Court will have salaries and benefits equal to those of the ministers of the Superior Courts of the Union.

Article 30. It is incumbent on the Military Justice System to try and judge the members of the military in military crimes defined by law.

Paragraph 1. In wartime, that special forum will be extended to civilians, in the cases cited by law, to repress crimes against the external security of the country or the military institutions.

Paragraph 2. The law will govern the application of the penalties of military legislation during wartime.

Section VII

On the Electoral Courts and Judges

Article 31. The organs of the Electoral Justice System are as follows:

- I. Superior Electoral Court;
- II. Regional Electoral Courts;
- III. Electoral Judges;
- IV. Electoral Boards.

Single paragraph. The judges of the Electoral Courts, except when there are justified reasons, will serve compulsorily for a minimum of 2 years, and never for more than two consecutive 2-year terms; the substitutes will be selected on the same occasion and by the same process, in an equal number for each category.

Article 32. The Supreme Electoral Court, with seat in the capital of the Union, will be comprised of:

- I. Through election, by secret vote:
 - a. Three judges, from among the ministers of the Federal Supreme Court;
 - b. Two judges, from among the members of the Superior Court of Justice;
- II. By appointment of the president of the republic, two from among six attorneys with notable legal learning and moral suitability, nominated by the Federal Supreme Court.

Single paragraph. The Superior Electoral Court will elect its president and vice president from among the three ministers of the Federal Supreme Court.

Article 33. There will be a Regional Electoral Court in the capital of each State and in the Federal District.

Article 34. The Regional Electoral Courts will be comprised of:

I. Through election, by secret vote:

- a. Two judges from among the chief judges of the Court of Justice; and,
- b. Two law judges selected by the Court of Justice from among the office holders of the Capital judiciary;

II. One judge of the Federal Regional Court, with seat in the State capital or, if there is none, a federal judge selected, in any case, by the respective Regional Federal Court;

III. By appointment of the president of the republic, two from among six attorneys with notable legal learning and moral suitability, nominated by the Court of Justice.

Paragraph 1. The Regional Electoral Court will elect as president one of the two chief judges of the Court of Justice, with the other assigned the vice presidency.

Paragraph 2. The number of judges in the Electoral Courts will not be reduced, but may be raised to nine, at the proposal of the Superior Electoral Court, in the manner suggested by it.

Article 35. The law will govern the organization of the Electoral Boards, which will be presided over by a law judge, and whose members will be approved by the Regional Electoral Court and appointed by its president.

Article 36. The law judges will perform the duties of electoral judges, with full jurisdiction and as prescribed by law.

Single paragraph. The law may grant powers for non-decisive duties to other judges.

Article 37. The judges and members of the Electoral Courts and Board will, in the performance of their duties and insofar as it is applicable to them, enjoy full guarantees and will be permanent.

Article 38. The law will stipulate the authority of the Electoral Courts and judges, including among their powers:

- I. The recording and cancellation of registrations of the political parties, as well as the inspection of their finances;
- II. The electoral division of the country;
- III. The electoral enrollment;

IV. The setting of dates for elections, when they are not determined by a constitutional or legal ruling;

V. The process and polling of elections, and the issuance of the legal certification;

VI. The decision in arguments involving ineligibility;

VII. The annulment of legal certification and forfeit of elective mandates when they have been proven to be procured through abuse of economic or political power;

VIII. The process and polling of a plebiscite and referendum;

IX. The trial and judgment of electoral crimes and those associated with them, as well as those involving habeas corpus and security orders in an electoral or associated matter;

X. The judgment of claims relating to obligations imposed by law on the political parties.

Single paragraph. The provisions of paragraph 1 of Article 9 on the Legislative Branch will be applied to the process cited in section VII of this article, except when initiated prior to the taking of office.

Article 39. An appeal of the decisions of the Regional Electoral Courts to the Superior Electoral Court will be in order only when:

I. They have been issued against an express provision of the law;

II. There occurs a difference in the interpretation of the law between two or more Electoral Courts;

III. They deal with ineligibility or issuance of legal documents in federal and state elections; or,

IV. They annul the legal documents, or order the forfeiture of federal or state electoral mandates;

V. They deny habeas corpus or a security order.

Article 40. The Federal Territories of Amapa, Roraima, and Fernando de Noronha are under the jurisdiction of the Regional Electoral Courts of Para, Amazonas, and Pernambuco, respectively.

Section VIII

On the Labor Courts and Judges

Article 41. The organs of the Labor Justice System are as follows:

I. Superior Labor Court;

II. Regional Labor Courts;

III. Boards of Conciliation and Judgment.

Paragraph 1. The Superior Labor Court will be comprised of a minimum of 25 ministers, appointed by the president of the republic;

a. At least a fifth from among attorneys in the actual practice of the profession and with well-known specialized legal learning, and members of the Labor Public Ministry, after the selection has been approved by the Federal Senate;

b. The rest from among judges of the Regional Labor Courts, nominated on a triple list organized by the court.

Paragraph 2. The Regional Labor Courts will be comprised of judges appointed by the president of the republic:

a. A fifth through appointment by the president of the republic, from among attorneys and members of the Labor Public Ministry, with the requirements cited in paragraph 1 of this article;

b. The rest, through promotion of labor judges, based alternately on seniority and merit.

Paragraph 3. The Boards of Conciliation and Judgment will be comprised of one labor judge, presiding over it, and two temporary professional judges, representing employees and employers, respectively, with a single renomination allowed.

Paragraph 4. The organs of the Labor Justice System must, in the cases specified by law, and may, in any case, request assistance from union representatives from the categories to which the parties belong, in individual or collective disputes, who will serve as advisors in the preparation and discussion of the case.

Article 42. It is incumbent on the Labor Justice System to conciliate and judge individual and collective disputes between employees and employers, including direct and indirect public administration, and other controversies originating in labor relations, governed by special legislation, or stemming from the execution of its own decisions.

Paragraph 1. In collective disputes, when the conciliatory action and negotiation between parties have been exhausted, the decisions may stipulate labor regulations and conditions.

Paragraph 2. In the decisions cited in the preceding paragraph. the execution will be carried out independent of the publication of the judgment [words missing]; its preliminary suspension, when authorized by law, will be decided in a plenary session by the Superior Labor Court.

Title III

On the Public Ministry

Article 1. The Public Ministry is a permanent institution, essential to the State's jurisdictional function, responsible for the defense of the democratic system, the legal order and the inalienable social and individual interests.

Paragraph 1. Functional unity, indivisibility, and independence are institutional principles of the Public Ministry.

Paragraph 2. The Public Ministry will enjoy administrative and financial autonomy, with its own budgetary appropriation, the annual proposal for which it will organize to be sent to the National Congress together with that of the Executive Branch.

Article 2. The Public Ministry of the Union includes:

I. The Federal Public Ministry, which will officiate before the Federal Supreme Court, the Superior Court of Justice, the Union Accounting Office, and the common Federal Courts and judges;

II. The Electoral Public Ministry;

III. The Military Public Ministry;

IV. The Labor Public Ministry.

Article 3. The attorney general of the republic will be appointed by the president of the republic, from among citizens over age 35, with notable legal learning and unblemished reputation, after the selection has been approved by the Federal Senate, and will serve for a time to be determined, which will end with the conclusion of the presidential term during which the appointment occurred.

Single paragraph. The ex officio dismissal of the attorney general before the end of his investiture will be contingent on prior consent of the absolute majority of the Federal Senate.

Article 4. It is incumbent on the attorney general of the republic:

I. To exercise the superior administration of the Union's Public Ministry and the supervision of the judicial defense of the federal local governments for which his prosecutors are responsible;

II. To head the Federal Public Ministry and the Electoral Public Ministry;

III. To represent, for the declaration of constitutionality or non-constitutionality of a federal or state law, or regulatory act;

IV. To represent, in the cases defined in a Complementary Law, for the interpretation of a federal law or regulatory act;

V. To represent, for purposes of federal intervention in the States, based on the terms of this Constitution;

Paragraph 1. The representation to which section III of this article refers will be directed by the attorney general of the republic, without precluding his contrary opinion, when it is fundamentally requested by:

- a. The president of the republic or the president of the Council of Ministers;
- b. The Boards of the Federal Senate or of the Chamber of Deputies, or a quarter of the members of either House;
- c. The governor, the Legislative Assembly, or the head of the State Public Ministry;
- d. The Federal Council of the Organization of Brazilian Attorneys, through a resolution adopted by two thirds of its members.

Paragraph 2. The provision in line a of the foregoing paragraph applies to the representations specified in sections 4 and 5 of this article.

Article 5. Institutional functions reserved for the Public Ministry, in the area of action of each of its organs, are:

I. To bring public penal action;

II. To bring public civil action, according to the terms of the law, for the protection of the public and social patrimony, of dispersed and collective interests; of indispensable rights, and of legal situations of general interest, or to curb abuse of authority or of economic power;

III. To exercise the supervision of criminal investigation;

IV. To intervene in any process, in the cases specified in the law, or when it considers that important public or social interest exists.

Paragraph 1. For the discharge of its functions, the Public Ministry may demand of the competent authority the initiation of investigations necessary for the public action incumbent on it, and may call for them to compensate for omission, or when they are designed to ascertain abuse of authority, as well as in other cases specified by the law.

Paragraph 2. The legitimacy of the Public Ministry for the civil action cited in this article does not prevent that of third parties, in the same contingencies, as prescribed by law.

Paragraph 3. Also incumbent on the Public Ministry of the Union is its judicial representation in the judiciatures of the interior, the assignment may be given to the State and Municipal prosecutors.

Article 6. A Complementary Law, at the proposal of the president of the republic, will organize the Public Ministry of the Union and will establish general rules for the organization of the Public Ministry of the States, the Federal District, and the Territories, assuring their members:

I. Functional independence, without precluding the unity and indivisibility of the institution;

II. The following guarantees:

a. Lifelong status, not being able to lose the position except by virtue of a judicial verdict;

b. Permanence, except when prompted by important public interest, through representation of the attorney general, with the competent association heard; reserving for the former the authority to appoint the members of the Public Ministry under his leadership for specific and temporary duties outside the site of their civil service division;

c. Irreducibility of salary, and its parity with those of the corresponding judicial organs; the latter when the position is exercised based on a system of exclusive engagement;

d. Voluntary promotions based on seniority and merit, which may be contingent on passing grades in a specific course;

e. Compulsory retirement at aged 70 or proven disability, and optional retirement after 30 years of service.

Article 7. The members of the Public Ministry of the Union will enter the initial positions in the respective career services through a public examination with tests and certification.

Article 8. A member of the Public Ministry is forbidden, under penalty of losing the position:

I. To exercise any other public activity, except for a single teaching position, and a position or function on temporary assignment, when authorized by the attorney general, in the manner prescribed by law;

II. To receive, at any time and on any grounds, percentages or costs in the processes in which he officiates;

III. To engage in commerce or participate in a commercial firm, except as a shareholder or stockholder, which is not under his control.

Title IV

On the Economic Order

Article 1. The economic order will have as grounds social justice and development, being required to assure a decent existence to everyone.

Single paragraph. The organization of economic activity will have as principles:

- I. The appreciation of work;
- II. Free enterprise;
- III. The social function of property and enterprise;
- IV. Harmony among the social categories of production;
- V. Assuring full employment;
- VI. Reduction in social and regional inequalities;
- VII. Strengthening of the national enterprise;
- VIII. Stimulation of innovative technologies geared to national development.

Article 2. The exercise of economic activity, whatever its agent may be, is subordinate to the general interest, and must be carried out in harmony with the principles and goals determined in this Title.

Article 3. Economic activity will be executed through private enterprise, with the State's suppletive and regulatory action preserved, as well as the enterprise's social function.

Single paragraph. Economic activity is considered to be atypical of the kind carried out in the privacy of the home.

Article 4. The State's intervention in the economic area may be direct or indirect, assuming the form of control, stimulation, direct management, suppletive action, and participation in the capital of enterprises.

Paragraph 1. The Public Authority will intervene in a regulatory fashion in the control and inspection of private activity, within the limits of authority set in this Constitution.

Paragraph 2. The activity involving stimulation will be aimed at giving an incentive for and promoting those activities which the State wishes to see developed.

Paragraph 3. The State's suppletive action will be restricted, occurring only when proven necessary and in accordance with economic planning guidelines. The monopoly will be created in a special law.

Paragraph 4. Cooperativism and associativism will be encouraged and given an incentive by the State.

Article 5. In the exploitation of economic activity, public enterprises and associations with mixed economy will be governed by the rules applicable to private enterprise, including those relating to the right to work and the obligations.

Single paragraph. The public enterprise engaged in non-monopolized activity will be subject to the same treatment, including tax system, applied to the private enterprises competing with it on the market.

Article 6. The law will govern investments of foreign capital.

Single paragraph. The law will regulate the methods and types of nationalization of enterprises with foreign capital, in the cases specified in the development plans approved by the National Congress.

Article 7. The law regulating foreign capital investments will be based on the following principles, among others:

I. Suppletive function of foreign capital;

II. Special system, with maximum limits on remittance of interest, dividends, royalties, payments for technical assistance and grants, and compulsory advertising to enlighten the public;

III. The ban on transfer abroad of land in which there are mineral deposits, mines, and other resources, and electric power potential.

Single paragraph. Questions relating to a foreign debt, assumed or guaranteed by a body corporate of public law, will be assessed in the Federal District.

Article 8. For all legal purposes, only an enterprise the control of whose capital belongs to Brazilians and which, established with headquarters in the country, has its decision-making center here, will be considered a national enterprise.

Article 9. The State must, through a special law, establish rules for the planning of the economic activity in the country, with the planning imperative for the public sector, and the planning indicative for the private sector, so as to meet the collective needs, balance the regional and sectorial differences, and stimulate the growth of wealth and income, and their just distribution.

Paragraph 1. The formulation of the national and regional development plans will have the participation, as prescribed by law, of bodies corporate of public law, special commissions, professional organizations, and union entities.

Paragraph 2. The economic planning will make the development compatible with the preservation of the ecological balance and the quality of the environment.

Article 10. It is incumbent on the state, directly or based on a system of concession or permit, to render public services.

Single paragraph. The system of concessions for purposes of federal, state, or municipal public services will be based on the following principles:

- a. Obligation to maintain proper service;
- b. Rates that allow for the fair repayment of capital, and the improvement and expansion of services, and assure the economic and financial equilibrium of the contract; and,
- c. Constant inspection and periodic revision of rates, even though they have been stipulated in a previous contract.

Article 11. The law will repress each and every type of abuse of economic power the purpose of which is to dominate the national markets, to eliminate competition, and to arbitrarily increase profits.

Article 12. Federal law will govern the operation of deposit banks, and financial and insurance companies, of all types, and the majority of their capital with a right to vote must be comprised of Brazilians.

Single paragraph. The companies currently authorized to operate in the country will have a deadline, set by law, to convert into national enterprises, as conceived in Article 8 (on the Economic Order) of this Constitution.

Article 13. The deposits, mines, and other mineral resources and the hydraulic power potential constitute property different from land property, the subsoil in this case being the property of the Union.

Paragraph 1. The exploitation and utilization of deposits, mines and hydraulic power potential are contingent on federal authorization or concession, in the manner prescribed by law, which may be granted only to Brazilians and to national firms.

Paragraph 2. The owner of the land is assured participation in the results of the working thereof; as for the deposits and mines the exploitation of which constitutes a monopoly of the Union, the law will govern the method of indemnification.

Paragraph 3. The participation mentioned in the preceding paragraph will not be less than a tenth of the tax on minerals.

Paragraph 4. The utilization of hydraulic power with reduced potential and, in any case, the collection of solar energy, will not be contingent on authorization.

Paragraph 5. The authorization for mineral investigation and concessions for operation will be for a certain time period, renewable in the national interest, as prescribed by law.

Paragraph 6. The system of exploiting natural resources will guarantee the States in which it is done participation in the results thereof.

Article 14. The investigation, operation, refining, processing, maritime transportation and duct transportation of petroleum and its by-products, and of natural gas on national territory, constitute a monopoly of the Union.

Paragraph 1. The Union may authorize the States and Municipalities to perform services to channel the natural gas exploited by it.

Paragraph 2. The channeling of natural gas will be based on a project previously approved by the Union and by the States and Municipalities whose territory it crosses.

Article 15. The investigation, operation, and enrichment of nuclear ores and fissile materials, located on national territory, and their industrialization and commerce, constitute a monopoly of the Union.

Article 16. Everyone is assured, according to law, the right to rural territorial property, contingent on its social function.

Paragraph 1. To guarantee the function of the property mentioned in this article, its use will be directed toward:

- a. Assuring a suitable living standard for those who work on it, and for their families;
- b. Executing rational exploitation of the land;
- c. Conserving natural resources and suitably maintaining community equipment;
- d. Observing the legal regulations that govern work relations.

Paragraph 2. It is a duty of the Public Authority:

- a. To foster and create conditions for the worker's access to ownership of economically useful land, preferably in the region where he resides, or, when

the urban or regional circumstances so advise, in fully accommodated areas, in the manner that the law will determine;

b. To see to it that the ownership of the land discharges its function, stimulating plans for rational utilization, and fostering fair remuneration and access by the worker to the benefits of community equipment, increased productivity, and collective welfare;

c. To establish, bearing in mind the regional idiosyncracies, the maximum area of rural property to receive tax benefits and subsidized credit.

Article 17. The Union will promote the expropriation of rural territorial property, through the payment of fair indemnification, based on the criteria that the law stipulates, in special public debt bonds, with an updating clause, which are negotiable and redeemable within a period of 20 years, in annual, equal, and consecutive amounts, with their acceptance assured at any time as a means of payment of federal taxes and the price of public land.

Paragraph 1. The law will rule on the annual volume of bond issues, their features, interest rates, term, and conditions for redemption.

Paragraph 2. The expropriation mentioned in this article is within the sole jurisdiction of the Union, and will be made by decree of the Executive Branch, affecting the rural properties whose method of exploitation runs counter to the principles stipulated in this Constitution.

Paragraph 3. Indemnification with bonds will be made only when a large estate is concerned, as conceived by law, except for the necessary, useful improvements, which will always be paid for in cash.

Paragraph 4. The president of the republic may delegate to the federal authorities the powers for the expropriation of rural properties based on social interest, with the declaration of priority zones for the implementation of regional agrarian reform plans retained exclusively by him.

Paragraph 5. Property owners will be exempt from taxes levied on the indemnification of the property expropriated in the manner cited in this article.

Article 18. Anyone who, without being a rural or urban property owner, has occupied, for 5 years uninterruptedly, without opposition or acknowledgment of another's ownership, a portion of land not exceeding 50 hectares, making it productive through his work and having his dwelling on it, will acquire ownership thereof, through a declaratory judgment duly transcribed.

Single paragraph. The Public Ministry will have concurrent legitimization, based on the terms of the law, for action founded upon this article.

Article 19. Rural property up to a limit of 100 hectares, including its housing used by the rural worker who is cultivating it and residing in it, is not subject to attachment. In this case, the guarantee based on exceptions will be limited to the harvest.

Article 20. A Federal Law will govern the conditions for legitimization of ownership and transfer for acquisition, up to 100 hectares, of public land by those who have made it productive by their work and that of their family.

Article 21. A Complementary Law will define the cases wherein exploitation of the rural enterprise is allowed for agrarian reform purposes, through indemnification in cash.

Article 22. A Complementary Law will define the conditions under which the holder of urban territorial property may be compelled, within a certain time period, to put it to socially suitable use, under penalty of expropriation based on social interest or the effect of measures of a tax nature.

Article 23. The value added, which has been proven to result from public investments in an urban or rural area, may not be appropriated by the property holder.

Single paragraph. A Complementary Law will define the criteria whereby the public entity that has made the investment will recover the increased value of the real estate, allocating it for purposes of a social nature.

Article 24. The law will stipulate plans for settlement and utilization of public land. For this purpose, nationals will be preferred and, among them, the residents of poor areas and the unemployed.

Single paragraph. No transfer or concession of public land with an area exceeding 3,000 hectares will be made.

Article 25. The selection, entry, distribution, and settlement of immigrants will be subject, as prescribed by law, to the requirements of the national interest.

Article 26. The owners, shippers, and commanders of national vessels, as well as two thirds of their crew members, will be Brazilians.

Paragraph 1. Bodies corporate organized for shipping activity must have direct or indirect company control by Brazilians.

Paragraph 2. Coastwise shipping and interior shipping are reserved exclusively for national vessels, except in the event of public necessity.

Paragraph 3. The provisions of this article do not apply to vessels used for fishing, maritime support, sports, tourism, and recreation, or to platforms, which will be regulated by a federal law.

Title V

On the Social Order

Article 1. The purpose of the social order is to achieve social justice, based on the following principles:

- I. Right to work, through a policy of full employment;
- II. Work as a social obligation, except by reason of age, illness, or disability;
- III. Right to a source of income that will afford a decent existence;
- IV. Equal opportunities in the choice of occupation or type of work;
- V. Effective participation in citizenship and in the enjoyment of social welfare;
- VI. Right to a dwelling of suitable size, under healthy, comfortable conditions;
- VII. Development of a social security policy;
- VIII. Social function of motherhood and family as a fundamental value;
- IX. Efficacious protection for children, adolescents, and the aged;
- X. Respect and social protection for minorities;
- XI. Right to health and education.

Chapter I

Rights of Workers

Article 2. The rules for protection of workers will be based on the following precepts, in addition to others aimed at improving their benefits:

- I. A fair, real wage capable of meeting the normal needs of the worker and his family;
- II. Family-wage for his dependents;
- III. Ban on difference in wage and criteria for admission, promotion, and leave, for reasons of discrimination based on race, color, sex, religion, political opinion, nationality, age, civil status, origin, physical disability, or social status;
- IV. Wage for night work higher than that for day work;
- V. Duration of work not exceeding 40 hours per week, with daily duration not exceeding 8 hours, with a break for rest, except in special cases prescribed by law;
- VI. Paid weekly time off, preferably on Sundays, and civic and religious holidays, according to local tradition;

VII. Paid annual vacations;

VIII. Health and safety at work;

IX. Compulsory use of technological measures aimed at eliminating or reducing to a minimum unhealthy conditions on work sites;

X. A ban on work in unhealthy industries and on night work for those under age 18, and on any work for those under age 14;

XI. Paid leave for pregnant women, before and after delivery; with a guarantee of job stability from the beginning of the pregnancy up until 60 days after delivery;

XII. Guarantee of maintenance by companies of a nursery for their employees' children up to 1 year old, and of a mothers' school, up to 4 years, preferably established close to the work site;

XIII. Minimal job fixation for two thirds of Brazilian employees in all establishments, except in the mini-companies and those of a strictly family type;

XIV. Ban on a distinction between manual, technical, or intellectual work, insofar as the status of the worker is concerned, or among the respective professionals;

XV. Integration into the company's activity and development, with a share in the profits or billing, based on objective criteria specified by law, with workers' representation in the management and establishment of internal commissions, through a free, secret vote, with assistance from the respective trade union;

XVI. Stability in employment and guarantee fund for time in service;

XVII. Ban on requirements in the course on employment relations;

XVIII. Recognition of the collective bargaining for work and an incentive for the practice of collective negotiation.

Article 3. Professional or trade union association is free. No one will be required by law to join a trade union, nor to remain in it or to contribute to it.

Paragraph 1. The general assembly is the supreme deliberative organ of the trade union entity, with exclusive authority to approve its bylaws, and to deliberate on its establishment, organization, financial contribution and elections for its management and representative organs.

Paragraph 2. It is incumbent on the trade union entities to defend the rights and interests of the category which they represent, with participation in the

public enterprises and agencies directly associated with the exercise of those interests.

Paragraph 3. The trade union may intervene in any judicial or administrative matters, as an interested third party, or procedural substitute, provided the implication of direct or indirect harm to the activity or profession that might result therefrom has been proven.

Paragraph 4. No trade union entity may undergo intervention, be suspended, or be dissolved by the public authorities, except by judicial decision, with full right to defense guaranteed.

Article 4. The right to strike is recognized.

Paragraph 1. For its full exercise, provisions and guarantees will be established which are necessary to ensure the maintenance of the essential services to the community.

Paragraph 2. The categories of essential services which fail to resort to the right to strike will be entitled to the benefits already procured by the analogous or correlated categories.

Article 5. The Labor Public Ministry will be a legitimate party, according to law, for safeguarding the rights specified in this Chapter.

Chapter II

On Social Security

Article 6. Social security, through social insurance plans, with the contribution from the Union and, as the case may be, from companies and insured persons, is guaranteed in the manner stipulated by law:

I. To cover instances of illness, disability, and death, including cases of occupational accidents, old age, time in service, and aid for the support of dependents;

II. Protection for motherhood, particularly for pregnant women, as specified in line XI of Article 2, and for adoptive parents;

III. Medical services, including those of a preventive, remedial, and rehabilitation nature;

IV. Social services, depending on the needs of the individual and the family;

V. For unemployment insurance coverage, applied to all workers.

Article 7. The law will govern private insurance, of a type supplementing the social security plans.

Article 8. The Complementary Law will assure retirement for workers, including housewives and farm women, who will be required to contribute to social security, taking into account the sex and respective occupation.

Article 9. Vacation settlements and recuperation and convalescence clinics will be created, and maintained by the Union, States, and Municipalities, and by the social security and social assistance agencies, as prescribed by law.

Article 10. No provision of benefits or services included in social security may be created, augmented, or extended, without the pertinent source of the total cost defrayal.

Article 11. The management organs of the social security institutions will be formed in an associative, parity-based manner, with representatives of the Union, the employers, and the workers, as provided by law.

Article 12. The budget of the Union will compulsorily allocate specific appropriations, by way of its share, to supplement the amount of contributions from employers and workers, to meet the needs of cost defrayal for the social security plans.

Chapter III

On the Family

Article 13. The family, consisting of the married couple or stable unions, based on equality between man and woman, will have a right to protection from the state.

Single paragraph. In addition to assuring assistance to the family, the law will curb violence in the course of family relations, as well as the abandonment of minor children.

Article 14. Kinship is natural or civil, depending on whether it results from blood relationship, marriage, or adoption.

Paragraph 1. The children born within or outside of marriage will have equal rights and qualifications.

Paragraph 2. Corresponding to the parents' obligations to the children are the children's obligations to the parents.

Article 15. The parents will have equal rights and obligations, and paternal power may be exercised by either one of them, with that exercise subject to the interests of the children, whether it be of a material or a moral nature.

Article 16. Marriage will be civil, and its celebration free of charge.

Paragraph 1. Religious marriage will have civil effects, based on the terms of the law.

Paragraph 2. The law will not limit the number of dissolutions.

Article 17. The individual right to freely determine the number of children is guaranteed, and any type of coercion imposed by the public authorities and by private entities is prohibited.

Single paragraph. It is an obligation of the public authority to assure access to education, to information, and to suitable means and methods, with the parents' ethical and religious convictions respected.

Article 18. The law will regulate the admissibility of an investigation of paternity among incompetent persons, through published civil action contingent on representation.

Chapter IV

On Housing

Article 19. Everyone is guaranteed the right, for himself and for his family, to a decent, suitable dwelling, that will ensure them security, and personal and familial privacy.

Article 20. The public authorities will promote and execute housing plans and programs aimed at preventing real estate speculation; promoting landed property regularization, and expropriation of idle urban areas; urbanizing areas occupied by a low-income population; and backing private enterprise and that of the local communities for independent construction and housing cooperatives.

Article 21. The law will determine a percentage of the social taxes collected from enterprises, which will be withheld by the taxpayer himself, and managed by a parity-based commission consisting of representatives of the employer and his employees, subject to inspection by the competent public organs, in order to form a fund to be used for the construction of housing and the rendering of assistance services to workers.

Paragraph 1. The parity-based management will be free of charge, as an important service with a social purpose.

Paragraph 2. The law will stipulate levels of pay, time in service with the same employer, and number of dependents so as, based on these criteria, to distribute proportionately among the employees the housing and other benefits to those of lower income and with greater domestic burdens.

Chapter V

On Special Protection

Article 22. Assistance is assured to mothers, children, adolescents, the aged, and the incapacitated.

Article 23. It is incumbent on the Union, the States, and the Municipalities to promote the creation of a national system of mother and child assistance, and a national system of day-care facilities and infrastructure to back the family, without precluding the provisions of section XII of Article 2.

Article 24. Children, particularly orphans and abandoned children, without precluding the civil and penal liability of the parents who abandon them, will be entitled to special protection from the society and the State, against all types of discrimination and oppression, with total relief, support, education, and health.

Article 25. Adolescents benefit from special protection to make effective their economic, social and cultural rights, such as: access to education, culture, and work; occupational training and improvement; physical and sports instruction; and use of free time.

Article 26. The aged are entitled to economic security and conditions for housing and family or community coexistence, that will prevent and eliminate social isolation or deprivation.

Article 27. The incapacitated are assured improvement in their social and economic status, particularly through:

I. Special education free of charge;

II. Assistance, rehabilitation, and reinstatement in the country's social and economic life;

III. A ban on discrimination, including that relating to admission to work or public service, and wages;

IV. Opportunities for access to public buildings and parks.

Article 28. The earnings for the worker's retirement will be readjusted at equal intervals and rates for the category of job, position, function, or post in which the retirement occurred.

Single paragraph. No tax will be levied on the retirement earnings.

Article 29. The law will create tax incentives to enable retired persons to engage in activity in the same field in which they retired, provided that they offer their knowledge of a trade or profession in the form of methodical training and instruction.

Single paragraph. The law will govern the organization and exercise of this type of activity.

Chapter VI

On the Needy Population

Article 30. A Special Accounting Fund will be created by the Federal Government, of a permanent nature, with budgetary appropriations from the Union, the States, the Federal District, and the Municipalities, to provide for programs of assistance to the needy and underprivileged population throughout the entire national territory, in order to reduce the social and economic inequalities that beset them and to integrate them into Brazilian society, with the use and enjoyment of full citizenship.

Single paragraph. A Complementary Law will govern the National Social Recovery fund, its administration, the preparation of a program to apply the funds comprising it, the responsibilities of the Union, the States, the Federal District, and the Municipalities to defray its costs, and the criteria for the respective establishment and administration, in which representatives of the consignees themselves will participate.

Chapter VII

On the Indian Population

Article 31. The Federal Government, recognizing the Indian population as an integral part of the national community, will prepare specific legislation with a view toward protecting this population and its natural rights.

Single paragraph. This legislation will include measures aimed at:

- I. Allowing the aforementioned population to benefit, under equal conditions, from the rights and opportunities that the Brazilian legislation assures to the other segments of the populace, without precluding their specific habits and customs.
- II. Promoting social and economic support to the aforementioned population, guaranteeing proper protection of the land, institutions, persons, possessions, and work of the Indians, as well as the preservation of their identity.
- III. The support mentioned in the foregoing section will be the responsibility of a specific organ of federal administration.

Article 32. The land occupied by the Indians is inalienable, and will be demarcated, giving them permanent ownership and recognizing their right to the exclusive usufruct of the natural resources in the soil and subsoil, and all the advantages existing therein.

Paragraph 1. Land occupied by the Indians and inhabited by them is that used for their productive activities, as well as that necessary for their livelihood, depending on their own habits and customs, including that required for the preservation of their historic environment and patrimony.

Paragraph 2. The land cited at the "caput" [head] of the article belongs to the Union as unavailable assets, the utilization of which is unalterable.

Paragraph 3. The nullity and abolishment of the legal effects of acts of any kind the purpose of which is the control, ownership, use, occupation, or concession of land occupied by Indians or the natural resources of the soil and subsoil existing therein are declared.

Paragraph 4. The nullity and abolishment mentioned in the preceding paragraph do not give those with entitlement for control, owners, users, occupants, or concession holders the right to action or indemnification against Indians, but do give the right against the public authorities for acts carried out by them per se.

Article 33. The investigation, operation, or exploitation of ores in Indian lands may be carried out, as a privilege of the Union, when there is important national interest, so declared by the National Congress in each instance; provided there are no known reserves of the mineral resource in question sufficient for domestic consumption and exploitable, in other parts of Brazilian territory.

Paragraph 1. The investigation, operation, or exploitation of ores cited in this article are contingent upon registration of the demarcation of Indian land in the Patrimony Service of the Union, and on prior regulations issued by the Federal organ responsible for Indian policy governing the conditions under which the investigation, operation, or exploitation will be carried out.

Paragraph 2. The exploitation of mineral resources in Indian areas requires the payment of a percentage of no less than 5 percent of the value of the billing, for the benefit of the Indian communities.

Paragraph 3. The contracts involving interests of the Indian communities will have compulsory participation of the federal protective organizations and of the Public Ministry, under penalty of nullity.

Paragraph 4. The removal of Indian groups from their land, and the application of any coercive measure that would curtail their rights to ownership and usufruct stipulated in Article 31, are prohibited.

Article 34. The Public Ministry, ex officio or at the decision of the National Congress, the Indian communities, their organizations, and an official organ for protection of Indians are legitimate parties to enter a suit in the defense of Indian interests.

Single paragraph. In the actions brought by Indian communities or their organizations, or against them, the judge will give a hearing to the Public Ministry, which will participate in the suit in defense of Indian interests.

Title VI

On Education, Culture and News Media

Chapter I

On Education

Article 1. Education, a right of everyone and an obligation of the State, is aimed at the full development of the person and the training of the citizen, for the perfection of democracy, human rights, and solidary coexistence in the service of a just and free society.

Single paragraph. Education is inseparable from the principles of equality between man and woman, from repudiation of all forms of racism and discrimination, respect for nature and the values of work, the imperatives of national development, coexistence with all peoples, and affirmation of the crossbred features and cultural pluralism of the Brazilian people.

Article 2. The educational system will be based on the following guidelines:

- A. Democratization of access for the entire society to the benefits of education;
- B. Pluralism of ideas and of public and private institutions;
- C. Decentralization of public education, giving priority responsibility to the States and Municipalities for primary and secondary education;
- D. Suitable participation, as prescribed by law, by all the members of the educational process in its decisions;
- E. Gearing of the values to regional and local conditions;
- F. Guarantee of permanent, suppletive education, and literacy for everyone;
- G. Appreciation of teaching on all levels, with a guarantee of minimal pay scales set by federal law;
- H. Surmounting of social and economic deprivation.

Article 3. Education is a responsibility of parents and, from the pre-school level, of the State.

Single paragraph. Included in the State's responsibility is special education free of charge for those with physical and mental disabilities.

Article 4. Education is compulsory for everyone aged 6 to 16 years, and will include training for the practice of an occupation.

Single paragraph. Primary education will be given in Portuguese, except in the Indian communities, where there will also be teaching in a native tongue.

Article 5. The Union will allocate, annually, no less than 13 percent, and the States, the Federal District, and the Municipalities, a minimum of 75 percent of what they accrue from collection of the respective taxes for the maintenance and development of education, executed according to the guidelines in Article 2.

Paragraph 1. The distribution of public funds for education will assure, as a priority, fulfillment of the requirements for compulsory schooling.

Paragraph 2. A Complementary Law will determine, multiannually, the percentage of funds of the Union, the Federal District, and the States applied for this purpose.

Paragraph 3. The municipalities will apply no less than 75 percent to compulsory schooling and pre-school education.

Article 6. Pluralistic provision of education is assured by the institutional autonomy and self-organization of public education, and by free organization on the part of private enterprise.

Article 7. Access to the educational process is assured:

A. By the free nature of public education on all levels;

B. By the adoption of an admission system in public educational establishments which, according to law, gives economically needy candidates, if they are qualified, priority access to up to a limit of 50 percent of the slots;

C. By the expansion of this free quality, through a system of study grants, at all times based on proof of the economic need of their beneficiaries;

D. By supplementary aid to the student for food, transportation, and clothing, in the event that the mere free nature of the schooling does not enable him to continue his studies, something which must be proven;

E. By maintenance of the requirement forcing commercial, industrial, and agricultural firms to guarantee free primary education for their employees and their children, between ages 6 and 16, or to assist for that purpose through a contribution of an educational wage in the manner prescribed by law;

F. By the supplementary creation of a municipal system of popularly sponsored schools capable of assuring effective conditions to afford the entire society access to education.

G. By the creation of tax incentives on behalf of natural persons or bodies corporate capable of allocating funds for the development of education, research, and extension activities.

Article 8. The law will regulate the transfer of public funds for private education to all who so request, within amounts previously established, and based on the classification process, taking into account:

A. The innovative contribution of the institution to education and research;

B. The compensation for qualitative or quantitative shortcomings in public education;

C. The participation of community representatives in the decisions of the benefiting institution;

D. The community interest in its activity.

Single paragraph. The institutions of social interest recognized by the public authorities and capable of progressively compensating, with alternate funds, for the aid received by the state, have priority in the allocation of those funds.

Article 9. The filling of the initial and final positions in the teaching profession on the intermediate and higher level of government education will be carried out through public examinations with certification and tests, with stability assured, whatever the legal system thereof may be.

Paragraph 1. The law and bylaws of the university will provide for early retirement in cases of obvious academic inefficiency of the holder of a stable position.

Paragraph 2. The immunity of teaching is assured and the dismissal made merely for difference of opinions is declared null, regardless of time in service.

Article 10. The present college entrance examination system is abolished. The law will establish minimal criteria for access to higher education, and will respect the autonomy of the universities to establish their own admission standards.

Single paragraph. So long as it is not regulated by a competent law, the admission system will be governed by the universities, insofar as they are concerned, and by the Ministry of Education, insofar as it relates to the other institutions of higher learning.

Article 11. Religious education will be optional in the government schools, without constituting a subject in the curriculum.

Chapter II

On Culture

Article 1. It is incumbent on the public authorities to guarantee freedom of creative expression of the individual's values, as well as participation in the cultural assets essential to the national identity, in harmony with universal values.

Paragraph 1. This expression includes preservation and development of the language and life styles comprising the national reality.

Paragraph 2. The cooperation of all the groups historically comprising the country's organization is recognized, through their egalitarian, pluralistic participation in expressing Brazilian culture.

Article 2. To fulfill the provisions of the preceding article, the public authorities will assure:

- A. Access to the cultural assets, in all their manifestations;
- B. Their free production, circulation, and exhibition to the entire society;
- C. Preservation of all types of expression of the socially relevant cultural assets, as well as those of national memoirs.

Article 3. The public authorities will provide conditions to preserve the ambience of the cultural assets, aimed at guaranteeing:

- A. The preservation of their meaningful form including, among other measures, demolition and the obligation to restore;
- B. The systematic inventory of those assets relating to the national identity.

Article 4. Cultural assets are those of a material or immaterial nature, either individual or collective, conveying a reference to national memoirs, including documents, works, sites, construction methods of historical or artistic value, significant natural landscapes, and archeological deposits.

Chapter III

On News Media

Article 1. The news media system consists of the press, radio, and television, and will be governed by law, according to its social function, and aimed at upholding truth and free circulation and universal dissemination of information, based on mutual understanding among individuals and the society's ethical foundations.

Article 2. The following are contingent on concession or authorization by the Union, in accordance with the conditions specified by law:

- a. The use of radio frequency, and commercial or educational television, by private persons, or radio amateurs;
- b. Installation and operation of directional television and cable television;
- c. Public rebroadcasts on national territory of radio and television broadcasts by satellite.

Paragraph 1. The concessions or authorizations may be suspended or cancelled only by a decision based on a violation defined by law, which will govern the right to renewal.

Paragraph 2. The State will publish annually the frequencies available in each federative unit, and anyone may promote bidding.

Article 3. Exclusive status in the exploitation of the private public utility services mentioned in the preceding paragraph, or monopoly and oligopoly therein, are not permitted.

Article 4. Ownership of newspaper enterprises of any type, or of radio and television enterprises, is prohibited:

- I. To foreigners or Brazilians naturalized for under 10 years;
- II. To corporations which do not have their headquarters, decision-making center, and capital control in the country.
- III. To a corporation with bearer shares.

Single paragraph. The administration and the intellectual or commercial orientation of the enterprises mentioned in this article are reserved exclusively for Brazilians.

Article 5. The News Media Council is established, with authority to grant the concessions or authorization cited in Article 2, to assure the use of those frequencies based on ideological pluralism, and to promote the judicial recall of the franchises issued by it, provided they deviate from the social function of those services, as well as deciding upon their renewal.

Single paragraph. The law will regulate the powers and formation of the Council, as well as the criteria for the social and ethical function of radio and television, observing the 11-member composition, with compulsory, majority representation of the community.

Chapter IV

On Science and Technology

Article 1. It is incumbent on the State, not precluding private enterprise, to provide for the development of science and technology, in the manner

prescribed by law, particularly through incentives for research, dissemination of information, and suitable transfer of the universal store of innovations.

Article 2. It is incumbent on the State to stimulate and guide technological development, abiding by the following principles:

- a. Application of funds and incentives to the national universities, research centers, and industries;
- b. Integration into the national market and productive process;
- c. Dealing with the social, cultural, economic, and political needs, and, on a priority basis, with the problems of deprivation;
- d. Respect toward the country's social and cultural features, and full use of its human and material resources;
- e. Reservation of the domestic market, which will require its expansion.

Single paragraph. It is incumbent on an enterprise operating in a sector which involves technological information to carry out research on scientific development, in the manner stipulated by law, the results of which would be incorporated into the national patrimony.

Article 3. The public authorities will preferably use national goods and services in the data processing area, observing the legal criteria that will assure their technological and economic adaptation to the goals intended.

Single paragraph. The transfer of information to foreign storage and processing centers is prohibited, except in the instances specified in treaties and conventions with a reciprocity clause.

Article 4. State and mixed economy enterprises will apply no less than 5 percent of their profit, through a specific fund, to the development of science and technology.

Title VII

On Health and Environment

Chapter I

On Health

Article 1. It is the obligation of the public authorities to promote and provide for health, as the state of complete physical, mental, and social well-being of all, guaranteeing them environmental and sanitary conditions.

Article 2. It is incumbent on the Union and the Municipalities, with the cooperation of private enterprise:

I. To promote and provide for health, through social security medical services, based on budgetary funds from the public authorities and those originating with social security;

II. To prepare a National Health Plan, under a unified management and with decentralized execution, aimed at universal assistance from its benefits.

Article 3. The National Health Plan will include, among other initiatives:

- a. Preventive medical and health assistance;
- b. Remedial medicine, including hospital-medical and multiprofessional assistance;
- c. Expansion of primary care services;
- d. Social medicine;
- e. Rehabilitation;
- f. Preventive and remedial dental assistance;
- g. Pharmaceutical assistance;
- h. Incentives and aid for sports and physical education;
- i. Development of the career training and organization of health professionals.

Single paragraph. The National Health Plan will encourage the community's involvement in health protection and maintenance.

Article 4. It is incumbent on the public authorities to organize a medicine production and distribution center, making it accessible to the entire population. Production of all the basic pharmaceutical components in the country and by national enterprises will be encouraged.

Article 5. The law will govern the creation of facilities for organ transplants, allowing their removal from human cadavers, independent of authorization while living, provided there is no opposition from the family.

Single paragraph. The dealing of organs is prohibited.

Article 6. The individual health record book is established, to record the history of its bearer's clinical existence, the notations in which will be entered solely by the professionals and services that assist him.

Article 7. The Union will allocate, annually, no less than 13 percent of its funds, and the States, the Federal District, and the Municipalities, a minimum of 13 percent of the proceeds from the revenue resulting from the respective taxes, for the maintenance and development of public health.

Article 8. State and private enterprises will dedicate a percentage of their gross income to the education and health of their employees.

Chapter II

On Environment

Article 9. The protection of the environment and the improvement of the quality of life are obligations of everyone and, on a priority basis, of the State.

Single paragraph. The protection cited in this article is aimed, as prescribed by law:

I. At promoting a guarantee of suitable use of natural resources;

II. At ecological balance;

III. At protection of fauna and flora, specifically, the natural forests, preserving the diversity of the nation's genetic patrimony;

IV. At combating pollution and erosion;

V. At reducing the risks of natural and nuclear disasters.

Article 10. It is incumbent on the public authorities to establish, among other measures, preventive action against disasters; limitations on extractive and predatory activities; for reservations, parks and ecological stations; the ecological organization of the soil; subordination of all urban and rural policy to an improvement of the environmental conditions and of the informational system regarding them; and control of environment in industrialized areas.

Article 11. The expansion or installation of nuclear and hydroelectric power plants and polluting industries, capable of causing damage to life or to the environment, is contingent on prior authorization from the National Congress.

Article 12. The performance of acts which affect the life and the ecological conditions for survival of species such as that of the whale, threatened with extinction, is prohibited on the National Territory, in the manner prescribed by law.

Article 13. The Amazon Forest is national patrimony. Its use will be made as prescribed by law, based on conditions that will assure the suitable preservation of its forest resources and environment.

Article 14. The law will establish the penal violations against the environment.

Title VIII

On Defense of the State, the Civil Society, and the Democratic Institutions

Chapter I

On the Armed Forces

Article 1. The Armed Forces, comprised of the Navy, the Army, and the Air Force, are regular, permanent, national institutions, organized as prescribed by law, based on the chain of command and discipline, under the supreme command of the president of the republic.

Article 2. The Armed Forces are intended to assure the independence and sovereignty of the country, the integrity of its territory, and the constitutional authorities and, at the express initiative of the latter, in the cases specified by law, the constitutional order.

Article 3. Military service is compulsory based on the terms and penalties of the law. In case of war, everyone is obliged to render the services required for the country's defense.

Single paragraph. The law may stipulate the rendering, during peacetime, of civil services in the national interest, as an alternative to military service.

Temporary Provisions. A common law relating to the status of the military will guarantee the prerogatives currently contained in the Constitution.

Chapter II

Public Security

Article 4. The maintenance of public order and the protection of the safety of persons and patrimony is an obligation of the civil police, who are subordinate to the State Executive Branch.

Paragraph 1. The civil police will exercise conspicuous and preventive vigilance, and will act as judicial police.

Paragraph 2. The civil police may maintain cadres of agents in uniform.

Paragraph 3. The operation of the civil police will observe strict compliance with the law, with punishment for abuse of authority.

Article 5. The municipalities with over 200,000 inhabitants may create and maintain the municipal guard as an auxiliary of the civil police.

Article 6. The States may create and maintain the military police, subordinate to the State Executive Branch, to exercise the function of a deterrent force, firefighters corps, and conspicuous policing, when the civil police uniformed agents are insufficient.

Single paragraph. The federal law will set the limits on the military police weapons and personnel.

Article 7. In the event of the ordering of a state of alert or of siege, or of federal intervention, the police forces may be convoked or subjected to the Armed Forces command.

Article 8. It is incumbent on the Federal Police:

- I. To carry out the services of the maritime, air, and border police;
- II. To prevent and repress the trafficking of narcotics and hallucinogenic drugs;
- III. To check violations against the democratic institutions and the popular economy, without precluding equal authority of the state police, or to the detriment of goods, services, and interests of the Union, as well as other violations the commission of which has interstate repercussions and requires uniform repression, as prescribed by law;
- IV. To police the federal highways and railroads;
- V. To take repressive action against crimes with international repercussions, to check the documentation of foreigners, and to issue passports;
- VI. To supplement the action of the States in checking penal violations of any nature, at their own initiative and in the manner prescribed by a Complementary Law;
- VII. To curb electoral violations and crimes.

Single paragraph. The federal police may delegate authority to the state police for exercising the powers specified in this article.

Chapter III

National Defense Council

Article 9. The National Defense Council, chaired by the president of the republic, consists of the members of the Council of State, the president of the Council, the minister of justice, the ministers of the military branches, and the minister of foreign affairs.

Article 10. It is incumbent on the National Defense Council:

- I. To express an opinion on the ordering of states of alert and of siege;
- II. To express an opinion in the event of a declaration of war or of the making of peace;
- III. To express itself, at the initiative of the president of the republic, in important matters relating to the defense of the independence, sovereignty, and integrity of the territory, and the guarantee of the constitutional order.

Single paragraph. A Complementary Law will regulate the organization and operation of the National Defense Council.

Chapter IV

State of Alert

Article 11. The president of the republic, having heard the Council of Ministers and the National Defense Council, may order the state of alert when necessary to preserve or promptly restore, in certain, restricted locations, public order or social peace threatened or beset by disasters or serious disturbances which do not require the ordering of a state of siege.

Paragraph 1. The order declaring the state of alert will determine the time of its duration, will specify the areas to be included, and will indicate the coercive measures that will be in effect, among those specified individually in paragraph 3 of this article;

Paragraph 2. The time of duration of a state of alert will not exceed 30 days, and may be extended once and for an equal period, if the reasons which prompted the order persist;

Paragraph 3. The state of alert authorizes, based on the terms and limits of the law, restriction of the right of assembly and association; of correspondence and telegraph and telephone communications; and, in the event of a public disaster, the occupation and temporary use of public and private goods and services, being answerable to the Union for the resulting damage and costs;

Paragraph 4. During the effective period of the state of alert, arrest for a crime against the state, to be determined in the manner prescribed by law, by the executor of the stand-by measure, will be reported immediately to the competent judge, who will moderate it, unless it is legal. The arrest or detention of any person may not exceed 10 days, except when authorized by the Judicial Branch. The incommunicado status of the person in custody is prohibited;

Paragraph 5. The ordering of a state of alert or its extension will be reported by the president of the republic within 48 hours, with the respective justification, to the National Congress;

Paragraph 6. The National Congress, within 10 days reckoned from the date of reception of the order, will consider it, and must remain in operation so long as the state of alert is in effect;

Paragraph 7. If the National Congress is in recess, the order will be considered by its standing commission;

Paragraph 8. When rejected by the National Congress, the state of alert ceases immediately, without precluding the validity of the acts carried out during its effective period;

Paragraph 9. The National Congress may appoint representatives to monitor and inspect the acts of the persons responsible for its execution;

Paragraph 10. When the state of alert or state of siege ends, the president of the republic will render detailed accounts of measures adopted during its execution, indicating specifically those affected, and the penalties or restrictions imposed.

Chapter V

State of Siege

Article 12. The National Congress may order a state of siege at its own initiative or that of the president of the republic, in cases:

I. Of serious internal upheaval or incidents attesting that it is about to erupt and that the state of alert is ineffective;

II. Of war or foreign aggression.

Article 13. The law ordering the state of siege will stipulate its duration and the regulations to be obeyed in its execution, and will indicate the constitutional guarantees the exercise of which will be suspended.

Single paragraph. When the law has been published, the president of the republic, hearing the Council of Ministers, will appoint by decree the executor of the measures and the areas included in them.

Article 14. During the break between the legislative sessions, having heard the Council of Ministers, the National Defense Council, and the standing commission of the National Congress, the president of the republic will be responsible for ordering or extending the state of siege, observing the rules of this Constitution.

Single paragraph. In this case, the president of the Federal Senate will immediately convoke the National Congress to meet in a special session, within 5 days, in order to consider the act of the president of the republic, and the Congress will remain in operation until the end of the stand-by measures.

Article 15. During the state of siege ordered with grounds in Number I of Article 12, only the following measures may be adopted against persons:

- I. Obligation to remain in a certain locality;
- II. Detention in a building not intended for perpetrators of common crimes;
- III. Restrictions on inviolability of correspondence, on confidentiality in communications, or in the provision of information, and on freedom of the press and radio broadcasting;
- IV. Suspension of freedom of assembly, including that in associations;
- V. Search and seizure in a domicile;
- VI. Intervention in public service enterprises;
- VII. Requisition of assets.

Single paragraph. Not included in the restrictions in section III of this article is the publication of statements by congressmen made in their respective legislative houses, provided they have been released by their boards.

Article 16. The state of siege in the case of Article 12-I may not be ordered for over 30 days, nor extended each time, for a period exceeding that. In the case of No II of the same article, it may be ordered for the entire time that the war or foreign aggression lasts.

Article 17. When the state of siege has been ordered by the president of the republic, the latter, after the National Congress has met, will report, in a special message, the reasons prompting the order, and will justify the measures that have been adopted. The National Congress, in a secret session, will start deliberating on the order issued, to revoke or maintain it, and may also consider the government's provisions of which it is apprised and, when necessary, may authorize the extension of the measure.

Article 18. The National Congress may appoint representatives to monitor and inspect the acts of the executors.

Article 19. The immunity of the members of the National Congress will continue during the state of siege; however, that of a deputy or senator whose acts are manifestly incompatible with the execution of the state of siege, outside the premises of the Congress, may be suspended by a vote of two thirds of the respective members of the Chamber or Senate.

Article 20. When the state of siege has expired, its effects will cease with it, without precluding the liability for the abuses committed.

Single paragraph. The measures applied during the effective period of the state of siege will, as soon as it ends, be reported by the president of the republic in a message to the National Congress, with specification and justification of the provisions adopted.

Article 21. The non-observance of any of the prescriptions of this session will make the coercion illegal, and will allow those injured to appeal to the competent organ of the Judicial Branch, which may not refuse to hear the merit of the petitions, when rights and guarantees assured in this Constitution have been invoked.

Title XI

General and Temporary Provisions

Article 1. The composition of the Chamber of Deputies resulting from the election of 15 November 1986 is excepted.

Article 2. The current Territories of Roraima and Amapa will be converted into States, observing in the law the same criteria followed in the creation of the States of Mato Grosso do Sul and Acre.

Paragraph 1. Ninety days after the creation of those States, the Superior Electoral Court will designate a date for the election of the governor and vice-governor and of three senators, with the one of these receiving the least votes assigned to exercise the remainder of the 4-year term, and the others, for 8 years.

Paragraph 2. The governor and vice governor will conclude their terms with the other governors.

Article 3. The Vale do Sao Francisco Development Company, the Amazonia Development Superintendency, the West-Central Region Development Superintendency, the Southern Region Development Superintendency, and the Northeast Development Superintendency are maintained, in accordance with the provisions of the law.

Article 4. Within a period of 60 days, reckoned from the date of promulgation of this document, the president of the republic, having heard the Federal Supreme Court, will submit to the National Congress a Complementary Bill to adapt the Organic Law on the National Magistracy in effect to the provisions of this Constitution.

Article 5. The Organic Law on the National Magistracy will create at least three Federal Regional Courts, establishing their seat, area of jurisdiction, and number of judges.

Single paragraph. One Federal Court will have a seat in the Federal District.

Article 6. For the initial composition of the Federal Regional Courts, it will be incumbent on:

I. The Federal Court of Appeals:

a. To nominate two federal judges for promotion based on seniority;

- b. To compose the triple lists of federal judges for promotion based on merit;
- c. To reduce by three names the lists of six attorneys and members of the Public Ministry;

II. The Federal Council of the Organization of Brazilian Attorneys, having heard the Sectional Councils of the respective areas of jurisdiction, to elect, by a secret vote and an absolute majority of the delegations, the lists of six attorneys;

III. The attorney general of the republic and the deputy attorneys general of the republic, by a secret vote and an absolute majority, to elect the lists of six members of the Federal Public Ministry.

Paragraph 1. The current ministers of the Federal Court of Appeals may, during the 20 days after their creation, opt for transfer to any of the Federal Regional Courts, in which they will occupy vacancies assigned for the category from which they have come. In this case, those taking the option are permanently assured earning the same salaries and benefits as those of the ministers of the Superior Courts of the Union.

Paragraph 2. The installation of the Federal Regional Courts will be made within a period of 60 days reckoned from the date of promulgation of the Complementary Law which created them.

Paragraph 3. Until the Federal Regional Courts have been installed, the Federal Court of Appeals will exercise their authority, with jurisdiction in the entire national territory.

Paragraph 4. After the date of promulgation of this Constitution, it is prohibited to fill the vacancy of the minister of the Federal Court of Appeals.

Article 7. The initial composition of the Superior Court of Justice will be made:

I. By the utilization of the ministers of the Federal Court of Appeals who, not having opted for the Federal Regional Courts, have procured the approval of the Federal Senate, with their reserve status at full pay assured, in case of refusal;

II. By the appointment of as many ministers as are necessary to complete the number stipulated in the Complementary Law, in the manner determined in this Constitution.

Paragraph 1. The current ministers of the Federal Court of Appeals will be considered to belong to the category from which they came at the time of their appointment.

Paragraph 2. The Superior Court of Justice will be installed, under the presidency of the president of the Federal Supreme Court, within a period of 120 days after the promulgation of the Organic Law on the National Magistracy.

Paragraph 3. Until the Superior Court of Justice has been installed, Article 119, section III. of the Federal Constitution will remain in effect.

Paragraph 4. The Organic Law on the National Magistracy will govern the conversion into a special appeal of an appeal after execution of judgment filed prior to the installation of the Superior Court of Justice.

Article 8. The Military Superior Court will retain its current composition until the surplus positions in the composition stipulated in this Constitution have been abolished, with the vacancy in the respective category.

Article 9. The State Military Justice Systems are abolished.

Single paragraph. The State law will assure compulsory utilization of magisterial judges and officials of the Military Justice System in the States' Common Justice System cadres, and reserve status of the military judges, and will govern competency for judging pending cases.

Article 10. The mandates of the current union ministers of the Superior Labor Court and the current union judges of the Regional Labor Courts are abolished.

Article 11. Jointly with the Organic Bill on the National Magistracy, the president of the republic will submit to the National Congress a Complementary Bill organizing the Public Ministry of the Union, and establishing general regulations for the organization of the Public Ministries of the States, the Federal District, and the Territories.

Article 12. The charges of any kind that may be paid on the foreign debt are limited to a maximum of 3 percent in real terms per year of the balance of the foreign debt already contracted by the Union.

Article 13. The foreign debt will be surveyed, during the 6 months following the promulgation of the Constitution, through an appropriate analysis of its legitimacy.

Article 14. The hearing and participation of citizens, directly or through representative organizations, will be assured by law, which will govern the process of preparing the administrative regulations and provisions pertaining to them.

Article 15. The retirement pay preceding this Constitution will be reviewed, based on paragraph 1 of Article 6.

Article 16. On the effective date of the Complementary Law cited in paragraph 2 of Article 2, the pay of public servants will be automatically reviewed.

Article 17. The title of minister is reserved exclusively for the ministers of state, the ministers of the Federal Supreme Court, the Superior Court of Justice, the Superior Military Court, the Superior Electoral Court, the Superior Labor Court, and the Federal Accounting Office, and those in the diplomatic career service.

Paragraph 1. The title of chief judge is reserved exclusively for the members of the Federal Regional Courts and the Courts of Justice; and that of judge, for the members of the lower courts of the second instance, and the magistrates of the first instance.

Paragraph 2. The members of the Accounting Offices of the States, or of an equivalent organ of the Federal District, and of the Municipalities, will have the title of counselor.

Article 18. Lifelong status is assured for full professors appointed up until 15 March 1967.

Article 19. The participation of public servants in the proceeds from the collection of any public revenue is prohibited.

Single paragraph. The law will govern the system of appropriate incentives to assure efficiency in the collection and oversight functions.

Article 20. Service in the judicial law courts and public registry positions is made official, with their heads and civil servants earning salaries solely from the public treasury, with lifelong tenure and stability for the current ones upheld under the new system.

Paragraph 1. A Complementary Law, at the initiative of the president of the republic, will govern general regulations to be observed by the States, the Federal District, and the Territories, in making that service official.

Paragraph 2. Any appointment of an effective nature to services not paid by the public treasury is prohibited until the Complementary Law cited in the preceding paragraph has gone into effect.

Article 21. The Complementary Law called for in the preceding paragraph will govern the abolishment of notary positions and the organization of notary's offices, allowing practice to all those qualified with proof of intellectual training and evidence of moral suitability, organized by the Courts of Justice with the cooperation of the Organization of Brazilian Attorneys.

Single paragraph. The law will assure qualification for holding the notary's office to those currently serving in notary positions.

Article 22. Added to those benefiting from the amnesty granted by Constitutional Amendment No 26, of 27 November 1985, is the full, general, unrestricted amnesty

including guarantees of return to their respective individual status, in civilian and military cadres, with rights to access, promotion, immediate active status, and reinstatement, salaries, benefits, and compensation for amounts in arrears.

Paragraph 1. In cases wherein the reinstatement mentioned in this article cannot be made because of a limitation on slots in the respective functional cadre, the servants in question will remain in a supplementary cadre if they do not opt for paid reserve status or retirement.

Paragraph 2. Indemnification is owed to the families of those who have died or disappeared during the course of acts of political repression.

Article 23. The properties of the Union located in the State of Rio de Janeiro, which, with the move of the Federal Capital to Brasília, were diverted from their purposes for construction or acquisition, will revert to the patrimony of that Federative Unit.

Article 24. The internal rules and regulations of the Houses of the National Congress will establish a priority system for discussing and including on the agenda the special and ordinary Complementary Bills specified in this Constitution.

Article 25. It will be incumbent on the Ministry of Health, to execute the unified control of the National Health Plan.

Single paragraph. The percentage of the social security funds collected that is due it will be assigned to the Health System.

Article 26. The State Legislative Assemblies are invested with constituent powers for a period of 6 months, reckoned from this date, to prepare State Constitutions, observing the provisions of Article 3 of Constitutional Amendment No 26, of 27 November 1985.

The Casuistic Draft

[Article by Ney Prado, jurist, who was executive secretary of the commission which prepared the draft of the Constitution]

A year and 2 months after its establishment by President Jose Sarney, the Constitutional Studies Commission is completing its work. The final touches are being applied by the members comprising the Drafting Commission. It is the desire of Professor Afonso Arinos that the final text, when completed and ready, be delivered to the president of the republic on 18 September.

But, as anticipated, even before its official release, the work has been the object of critical considerations on the part of the most varied segments of Brazilian society.

In my opinion, the judgment of the propositions upheld by the commission depends on the degree of expectation and knowledge of each individual, insofar as their real goals and purposes are.

It is presumed that, when the late President Tancredo Neves conceived the idea for it, he had in mind the attainment of two goals: to bring about a major national debate regarding issues of a constitutional nature, as a means of achieving mobilization and participation among the public; and to produce a constitutional draft that would serve as the Executive Branch's contribution to the work to devise the future Constitution done by the National Constituent Assembly.

My personal experience as a member and secretary general of the commission has led me to the conviction that the first goal will certainly be reached. I believe, as does Jorge Amado, "that, in essential aspects, the country's major problems have been tallied and studied in a search for solutions," by qualified persons interested and bent on succeeding.

I have no doubt that, henceforth, after the official release of the text, all discussion concerning the Constituent Assembly will increase in intensity, its basis and inspiration being the work of the commission.

But, as its proposals become known in detail, I think that its political-legal-technical value will be increasingly brought into question.

I regard it as extremely uncomfortable to make criticism of the method and substance of the work done by the commission; however, I consider it my duty to do so.

I would begin by saying, much to my dislike, that the text of our draft, in its scope, discloses its casuistic, prejudiced, utopian, socializing, xenophobic and, in many instances, dangerously demagogic aspect.

I say that it contains casuistries because, in it, everything is provided for and everything is regulated. Provisions are made for all contingencies, and arrangements are made for all the solutions. Its nearly 500 articles have converted the text into an extremely varied repertory of topics, without a precise distinction between what should really be a matter included in the future Constitution and what could be the object of complementary or even ordinary legislation. Strictly speaking, there is a constitutional presumptuousness to the point that the illustrious professor, Claudio Pacheco, also a council member, has described our work as a "Constitution of minor details." To exemplify this, one need only cite the article guaranteeing that "imprisonment in premises without light or without air circulation for any period of time and for any reason is prohibited."

As a result of this going into detail, as Prof Miguel Reale also stressed, the text has, accordingly, become "a minute, discordant conglomerate of rules, some excessive, and others unsuitable, if not ridiculous."

But, in addition to being casuistic, and perhaps for that very reason, it is also prejudiced. One could clearly perceive throughout the commission's work that the majority of its members put all the national institutions under suspicion, in varying degrees, it is true. Only one category escaped this attitude: the Brazilian person. In terms of rights, everything was given to that unsuspected figure. Because he was not suspect, nothing was required of him in terms of obligation. But when that abstract figure became individualized and was converted into a concrete entity, in other words, a member of the military, businessman, journalist, politician, etc., he was immediately beset with a series of precautions and preconceptions, resulting in a series of legal limits on his behavior.

Besides being casuistic and prejudiced, the work is for the most part utopian. From reading it, as Juarez Bahia also emphasized, one notes "a mere exercise in the art of construction in a vacuum: the base is the propositions and not the facts; the material is the ideas, and not the people; the situation is the world, and not the country; and the inhabitants are the future generations, not the current ones." In other words, it is a text that is excellently qualified, and well devised formally, but lacking much relationship with the real Brazil.

I am left wondering: how will it be possible to guarantee the constitutional right to a landscape? Or the constitutional right to healthy, ecologically balanced environments? Or the right to creative use of leisure time for work and for rest?

Another readily identifiable feature of the text produced is its aspect of state control. From the analysis of the chapters relating to the economic and social order, one observes that, rather than diminishing the presence of the state in the economy, emphasizing and reinforcing the free enterprise system and the market economy, it attributes to the state the role of principal agent of development and solver of problems; and, in this capacity, its powers are reinforced and expanded constitutionally.

Moreover, the socializing nature of the text has already been publicly admitted by the impartial priest and sociologist, Fernando Bastos de Avila, CNBB's [National Conference of Brazilian Bishops] representative on the commission.

The restrictions on the open economy system are increased excessively when issues involve foreign business firms and investments. There is in the work a list of measures ranging from nationalization of the banks and insurance companies to a ban on the transfer of land on which there are deposits, mines and other mineral resources, not to mention the strange limit of 3 percent of the balance of our foreign debt for the "charges of any kind that may be paid on it," and the survey of the foreign debt during the 6 months following the promulgation of the Constitution, through an appropriate analysis of its legitimacy.

Finally, I would also like to underscore the fact that many measures included in our text are of a clearly demagogic nature. Countless rights have been attributed to certain categories, without taking into account the availability of resources, or their practical viability. To cite only a few examples: the right to strike was established without any limitation; the maximum work period of 40 hours per week was applied to all workers, without discrimination; the minimum wage was replaced by a "just, real wage," and so on.

The negative features of the commission's work, which I have briefly noted, have already caused major repercussions, and will continue to do so. What is serious, however, is the fact that, since the commission is a government organ set up by the Executive Branch, its proposals, whether or not their authors so desire, have the power to produce crises, confusion, and misunderstandings of different kinds.

On the other hand, "the meager contribution of the parties to the constitutional debate, mainly because they are involved in the contests for state governments, has converted the commission's decisions into one of the most important references for the Congress to be elected in November. The excessive scope that the draft shows has a great chance of influencing the constituent endeavor itself." And if this occurs, we may have a Constitution that is formally advanced, but lacking in any correspondence with the Brazilian reality; which would be regrettable.

The publication, in its entirety, of this document is a contribution of Bloch Publishers and of the Votorantim Group, for the improved awareness of the Brazilian people, at a major political time in our history.

Manchete

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